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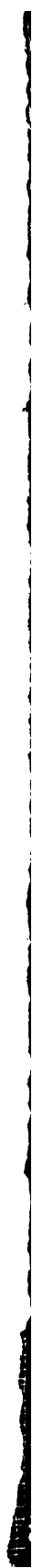
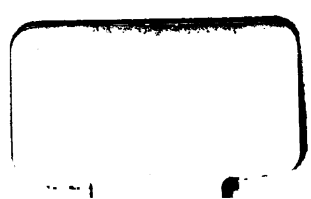
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NOTES ON  
INTERNATIONAL LAW



# NOTES ON INTERNATIONAL LAW

COMPILED BY

LIEUTENANT CHARLES P. EATON, U. S. NAVY

*Member of the New Jersey Bar*

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## PREFACE

The following International Law Notes were compiled for my own use with the object of putting the matter in a brief and condensed form. Snow's Lectures on International Law, prepared and arranged for publication by Commander C. H. Stockton, U. S. N., were used as a basis and they are largely quoted from. The subjects are as arranged in those lectures, but put in the form of Questions and Answers. The Questions consist of those which have been asked on examination of line officers of the U. S. Navy, which are marked \*; others arranged so as to bring out the subjects more fully; and Situations and Solutions propounded and solved at the U. S. Naval War College.

The following authorities have been consulted: Snow; Glass; Wheaton; Glenn; Woolsey; Hall; Halleck; Wharton; G. O. No. 100, U. S. War Department, of April 24, 1863; G. O. No. 492, U. S. Navy Department, June 20, 1898; U. S. Revised Statutes; U. S. Naval Regulations.

I have been asked by a number of officers to get these notes published, as this form of Questions and Answers is such a convenient one in many ways.

C. P. EATON, Lieutenant, U. S. N.



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# INTERNATIONAL LAW

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## INTRODUCTION

**1.\* What is International law, on what is it based, and to what extent is it recognized by civilized nations?**

That body of rules which governs the actions of states in their intercourse with one another. These rules are the outgrowth of the customs of nations, of international agreements, and of state acts which in the lapse of time have been accepted as binding by the civilized states of the world. It differs from the municipal or national law of individual states in that it has no superior or supreme tribunal whose function it is to enforce the law in the case of its infraction. It is obeyed for the most part without question, and most states have adopted it as part of their municipal law and a great majority of the cases that arise under it are adjudicated by the law courts of the individual states.

It is based on Right, Justice, and General Convenience.

**2. What is the origin of modern International law?**

In ancient times the state as known to modern times did not exist. The city-commonwealth was the political unit. Even Rome at the height of its power was still the city-commonwealth.

Rome had a code of laws, the *jus civile* administered by a praetor urbanus between Roman and Roman, and which had no application to foreigners. As a large colony of resident foreigners gathered at Rome, it became necessary to remedy that condition through the creation of a praetor peregrinus, praetor for foreigners, whose duty it was to administer justice between Romans and foreigners, between foreigners, and between citizens of the different cities of the empire. He naturally turned to the codes of all the cities from

which came the swarm of litigants, and discovered that there are certain universal and uniform conceptions of justice common to all civilized people. Out of this grew the "jus gentium," Rome's priceless legacy to modern international law, which, however, was limited to the relations of individual foreigners resident at Rome, and had nothing whatever to do with the relations of states to states.

The modern conception of a state occupying a definite area of territory has gradually arisen out of the settlements made by the Teutonic tribes on the wreck of the Roman Empire. Scattered Teutonic tribes gathered into larger wholes, nations. They were migratory nations, and the idea of sovereignty was not connected with domain over any particular part of the earth's surface. Alaric was king of the Goths wherever they might be, on the banks of the Tagus, the Tiber, or the Danube. These conquering tribes were at first simply encamped on the wreck of the Roman Empire, but gradually, by what is called the "process of feudalization" the elective chiefs became hereditary lords of given areas of land. This idea did not become dominant, however, until after the breaking up of the Empire of Charles the Great, out of the fragments of which arose most of the modern states of Europe. The completion of the transition from personal to territorial sovereignty is marked by the accession of the Capetian Dynasty in France.

The separate nationalities which arose passed a long childhood under the wings of the enduring power of a political theory. Out of the two ideas of a world-monarchy and a world-religion, arose the Holy Roman Empire, the Chiefs of which were the Roman Emperor and the Roman Pontiff. As the Pope conferred the imperial dignity by consecration, he finally claimed to be the ultimate judge of the Emperor's acts, with power of deprivation and deposition. This judicial supremacy was claimed by the Pope not only over the Emperor, but over all Christian princes, and it was claimed that all stood to the Pope as great vassals to a supreme lord or suzerain. Thus, for centuries, the medieval empire was the bond holding Europe together and assuming to provide a complete system of international justice and a supreme tribunal for the settlement of all controversies which might arise between Christian nations.

This lasted until after the Reformation. After the collapse of the ancient and imposing theory of a common and irresistible superior, the emancipated nationalities began to realize, first, that each state is sovereign and independent and as such co-equal with the rest, second, that territory and jurisdiction are co-extensive.

Having established a common basis of equality, the great question became how to subject the sovereign states, through their own volition, to the yoke of legality. Each mind that attempted it, turned to Roman jurisprudence. The most comprehensive and philosophical branch of Roman law was the "*jus gentium*." To Grotius more than any other is due the credit of having utilized these rules regulating the relations of individual foreigners, as a reservoir of principles from which were drawn the beginnings of the rules that now regulate the relations of states. From that time on, modern international law has been a gradual growth and development.

(From address by the Hon. Hannis Taylor before U. S. N. W. C.)



# **PART I**

## **INTERNATIONAL LAW IN TIME OF PEACE**

---

### **STATES.**

**3.\* Who are primarily governed by international law?**

Sovereign states.

**4. What is a state?**

"A state must be an organization of people for political ends; it must permanently occupy a fixed territory; it must possess an organized government capable of making and enforcing law within the community; and finally, to be a sovereign state it must not be subject to any external control."

"A state may be sovereign in its domestic affairs and yet not be sovereign in the international sense. It may be under the 'protection' of some other state, as is the case with the republics of San Marino and Andorra in Europe, and with most of the semi-barbarous states throughout the world. A state may lose its external sovereignty by being permanently linked with another state under a common sovereign, as Norway." (Snow.)

**5. What is the distinction between a state and a nation?**

"Though the terms are frequently used interchangeably, strictly speaking, a nation is composed of people of the same race, whereas, a state may be composed of several nations. The Jews are considered to be a nation, while Austria-Hungary as a state is composed of three distinct races; Germanic, Slavic, and Magyar." (Snow.)

**6. How are states classified?**

Generally under the following heads: Centralized states, Personal union, Real union, Confederate union, and Protected states.

**Centralized:**—single state under one sovereign or central national government. Examples: France, Spain, Portugal.

**Personal union:**—consists of two or more distinct states, otherwise independent, temporarily united under one sovereign. Hanover and Great Britain have been historical examples of this class.

**Real union:**—several originally separate states perpetually united under one sovereign or political organization, though each may preserve its distinct international laws. Austria-Hungary is an example of one type, and Great Britain and Ireland of another. A federal union like that of the United States is practically a real union.

**Confederate union:**—one in which each state has retained its independent and individual personality, but the states have formed into a confederation for purposes of domestic policy and mutual assistance. Example: the Germanic confederation, created by the treaty of Vienna in 1815.

**Protected states:**—those placed voluntarily or otherwise under the protection of another and stronger state on specified conditions.

There is another class of states which has recently been admitted into the society of international law and which can hardly lay claim to all rights of sovereign states. These are the semi-barbarous states of the East. Such as Turkey, Persia, China, Morocco, and other smaller states. The civilized states of Europe and America have generally entered into treaty relations with these states, and have established generally diplomatic relations with them, yet they are not permitted to exercise jurisdiction over the subjects and citizens of European and American states residing or traveling within their limits. Foreign consuls exercise a jurisdiction in their territories which thus derogates from their sovereignty. (Snow.)

#### 7.\* What are fundamental rights and duties of states?

The rights are, Self-preservation, Independence, and Equality. The corresponding duties are, good faith, a readiness to redress wrongs, a proper regard for the dignity and equality of other states, and a general good-will toward them.



8. What is the effect of internal change in a state?

Governments of states are to be regarded only as agents through which the states express their intentions. "A state neither loses any of its rights nor is discharged from any of its duties by a change in the form of its civil government." (Chancellor Kent.)

9. How do new states come into existence, and how are they recognized?

For the most part new states come into existence through successful rebellion. The rule of international law, with reference to the recognition of the independence of a state, is that war for its subjugation has practically ceased and that it has a stable government. (Snow.)

10. What is the effect of a change of sovereignty upon (a) public rights and obligations, (b) private rights and obligations?

(a) It is generally conceded that the rights acquired and the obligations contracted by the parent state adhere only to that state. This obtains in a general sense. There are, however, modifications of this rule.

(b) It has been generally held that rights and obligations of individuals are not affected by a cession or conquest of territory. (Snow.)

11. What is a de facto government or belligerent community?

"A political organization that has established itself, by regular hostilities or otherwise, to such a degree that it can exercise sovereign powers and be entitled to all the rights of war and commercial intercourse. As a government de facto and not de jure, it has not all the rights of a sovereign and independent state. The recognition of a de facto government, as such, may be consistent with uncertainty as to its permanence." (Snow.)

12. Through what stages does a new community usually pass before arriving at independence?

Insurgency, and belligerency. The insurgent community may never get beyond the first stage, as in the Brazilian insurrection of

1894. It may reach the second—belligerency—and get no further, as with the Confederate States in our civil war of 1861-1865, or it may gain its end as insurgents, never having been recognized as belligerents, as in the case of the Chilean insurgents in 1891.

13. What is the position of insurgents in general?

There has been much discussion on this subject. Until very recently they have had no standing in international law. In older treatises and in decisions of courts they have been referred to as pirates if they were found on the high seas. (See case of the *Ambrose Light*.) Recent practice seems opposed to this view.

It is agreed that they have no belligerent rights. Their war vessels are not received in foreign ports, they can not establish blockades which third powers will respect, and they must not interfere directly with the commerce of third states. Hostilities between the legal governments and rebels is, strictly speaking, not war, and there are present none of the legal consequences of war. There are no neutrals, for instance.

In the two important rebellions of recent years in South America, that of Chile in 1891 and that of Brazil in 1894, there was no recognition of belligerency in either case, yet the rebels were given freedom of action by the third powers. (Snow.)

In Rio harbor a virtually new question arose, viz., whether the insurgents in the course of regular hostilities, as a bombardment of the city or an attack on the forts, could practically prevent foreign merchantmen from moving about the harbor and from discharging and receiving cargoes at the regular places. This was outside the question of the right of a declaration of a blockade declared by the insurgents.

The decision of Admiral Benham, U. S. N., was to the effect that this could be done by the insurgents and that any movement on the part of American merchant vessels during the continuance of actual hostile operations was at their own risk, but that any attempt on the part of the insurgents to prevent legitimate movements of our vessels at other times was not to be permitted and that all possible protection was to be afforded such movements

by the naval force of the U. S. assembled at Rio under his command. The establishment of this point, which seemed to be the logical outcome of recent practice, almost recognizes an imperfect status or right of action afloat for insurgents.

14. Insurgents in state A, with which the United States has full international relations, proclaim and maintain a blockade of a port occupied by the state A. The captain of an American merchant ship complains to the commander of an approaching United States war ship that he can not enter port without incurring risk of the penalties for violation of blockade, and desires the assistance of the United States war ship in entering the port on the ground that no war exists in state A, and he is therefore entitled by treaty and on general principles to enter this port.

What position should the commander assume?

How far is the commander of the merchant ship correct in his contentions?

(Situation 6, 1902, U. S. N. W. C.)

"The commander of the United States war ship should assume the position that, in general, naval officers of the United States will permit no interference with ordinary commerce of the United States, unless they are duly instructed by their Government."

"1. Blockade is a war measure and should be reserved for a state of war between responsible belligerents.

"2. The precedents allowing certain interference with the commerce of states not concerned in insurrections has been based rather on policy and convenience than upon principles of international law. Even this interference must be in pursuance of orderly military operations, and commerce must not 'be at the mercy of every petty contest carried on by irresponsible insurgents and marauders under the name of war.'

"3. Insurgents cannot be allowed to establish a blockade binding on foreign states, because the status of insurgents is uncertain and the enforcement of blockade involves the establishment of prize courts and the exercise of extreme measures which can be allowed by foreign states only after belligerency has been recognized.

"4. Insurgents should not be allowed to establish blockades, because the growing importance of the world's commerce demands that for the well-being of mankind commerce should be in the fullest degree free, and that interference with it should be tolerated only after due notice of a contest of sufficient magnitude to constitute belligerency.

"5. The Institute of International Law at its session in 1901 declared that a third state which had not itself recognized the belligerency is not bound to respect blockades established by insurgents upon portions of the coast occupied by the regular government.

"6. Public officials abroad, as of State and Navy Departments, are entitled to instructions sufficiently definite to guide them in case of interference with foreign commerce by insurgents, as the precedents and interpretations have been varied and confusing."

"The captain of the merchant vessel is correct in his claim in regard to general principles, and most treaties secure commercial freedom."

15. How is an insurgent community recognized as having attained the state of belligerency (a) by third powers, (b) by the parent state?

(a) Usually by a formal notification of neutrality, giving the date from which the state assumes the attitude of neutrality.

(b) By a proclamation or establishment of blockade, an exchange of prisoners, and the enforcement of the rules of war as to the carriage of contraband by neutrals, etc.

16. Why is the question of the recognition of insurgents as belligerents such an important one to third powers?

Because neutral powers in time of maritime war must concede to belligerents certain rights which affect the freedom of action of their own citizens or subjects.

"If the contest is war, all foreign citizens and officials are to follow one line of conduct; if it is not war, they are to follow a totally different line." (Dana.)

17. What are the duties of a belligerent community, become independent, to the contract rights and duties of the parent state?

The same as when a change of sovereignty occurs in a portion of territory of an old state by cession or conquest.

### **TERRITORIAL PROPERTY OF A STATE.**

18. Of what does the territorial property of a state consist, and what is the nature of its title (a) as to other states, (b) as to its own citizens or subjects?

Of all land and water over which the state has jurisdiction or control, whether the legal title be in the state itself or in private individuals.

(a) Absolute.

(b) Paramount only, and forms what is called the right of eminent domain; that is, the right, in case of necessity or for public safety, of disposing of all property of every kind within the limits of the state. A state, like a private corporation, may have absolute ownership of property.

19. What is the extent of the territorial waters of a state?

The general rule has been established that the jurisdiction of a state extends over the open sea to a marine league from low-water mark, but the historical development of this subject is not yet complete. Lakes and rivers within a state are unquestionably part of the territorial property of the state, but with respect to certain gulfs and bays there is still dispute, especially as to such as are more than six miles wide.

20. What is the rule in regard to the use of marginal waters of a state or of straits exclusively under the territorial jurisdiction of a state but connecting free and unappropriated water for the purpose of navigation or "innocent passage?"

This right, as regards commercial navigation, seems completely established, on the grounds that the interests of the whole world are concerned in the possession of the utmost liberty of navigation, for the purpose of trade, by vessels of all states.

These reasons do not apply to vessels of war. A state has always the right to refuse access to its territorial waters to armed vessels of other states, if it wishes to do so.

**21.** Does a state ever have rights in the territory of other states?

Yes. Sometimes such rights are acquired by treaty or prescription, such as the right to navigate rivers, and the right of fishery. Certain territories are held in China under leases by European states.

The actual status of such leased territories has not yet been determined. The general position assumed by the powers is not that sovereignty has passed, but that the jurisdiction, to the extent named in the treaty of cession, has passed to the leasing power.

(See notes on Situation 3, 1902, U. S. N. W. C.)

Certain areas of land and water in Cuba are leased to the U. S. for Naval or Coaling Stations. See G. O., No. 142, 1903.

**22.** Do the people residing on the upper waters of a river have an international right to navigate the same through the territory of another state?

No. Such rights are created and established only by treaty. A number of such treaties have been made. Most of the great rivers of Europe are within the operation of such treaties.

**23.** While passing through the straits of Magellan, in command of a small cruiser, you come to anchor off the Chilean settlement at Sandy Point. This town has no consular or diplomatic representative of the U. S. and no telegraphic communication with the civilized world. You find detained, at anchor, a number of merchant vessels, Americans, English and Germans, whose masters inform you that they have been denied a passage through the straits. This prevents any mail communication with the outside world. The Chilean governor on shore informs you that the straits are considered by his government as exclusively territorial waters of Chile, and that he has, for what he deems sufficient reasons, closed the straits to passage by merchantmen, and the merchantmen having refused to go back, were detained by force by his order. He fur-

ther states that he does not feel authorized to deny passage to men-of-war. At this time no war exists and there is no belligerent operation in the vicinity.

What action do you take? (See Situation 2, 1895, U. S. N. W. C.)

Make free the navigation of the straits to both the American and the foreign merchantmen; to the latter as a matter of international courtesy, and inform the governor that while you have the power you will take the responsibility of keeping the straits open for commercial navigation. The right of the use of territorial waters may be denied under certain circumstances to vessels of war but not to merchantmen.

24. Same as above, except that later a large military detachment arrives from Chile, convoyed by a battleship and two large protected cruisers. The military and naval commanders request your departure at once from Sandy Point and the straits. They regret to tell you that, if necessary, they will use force. What do you do?

Protest against such action, and, having insufficient force, retire, proceeding to Montevideo to report the circumstances to the Department and await further instructions.

### TERRITORIAL JURISDICTION OF A STATE.

25. What is the fundamental rule of territorial jurisdiction?

That an independent state has absolute and exclusive jurisdiction over all persons and property within its boundaries.

26. What are the exceptions to this rule?

1. The immunity of a sovereign from arrest or detention within a foreign territory.

2. The extension of the same immunities to ambassadors and all diplomatic agents. These are extended to their immediate families and their official suites. Consuls are not diplomatic agents.

3. Ships of war and armed forces. This applies to all public vessels. An army is never allowed to cross the boundary of a friendly

state without the express permission of that state. As to ships of war, the case is different. If there is no express prohibition, the ports of every nation are considered opened to the public ships of war of all powers with whom it is at peace, and such ships, in friendly ports, enjoy to the fullest extent, the right of extraterritoriality. Their immunity has become more absolute than that of the official residence of ambassadors, and probably because they have the efficient means of resistance which an ambassador has not.

4. Certain immunities of merchant vessels in ports of certain states. According to the general interpretation of the rules of international law, a merchant vessel lying in a foreign port is as completely under the jurisdiction of that foreign state as a citizen of another state would be on land.

The French government finds a distinction between acts and offenses connected with the internal order and discipline of the ship, when the peace of the port is not disturbed, and acts which have an external effect, either directly or indirectly.

The former they leave to the laws of the state to which the ship belongs; the latter they regard as subject to the laws of the port.

Notwithstanding a tendency on the part of many states, including the U. S., to favor the French rule, this tendency is not authoritative unless supported by a special consular convention or treaty. The U. S. have made conventions of this kind, conferring on consuls jurisdiction over disputes between masters, officers, and crews of merchant vessels, with Austria-Hungary, Belgium, Colombia, Denmark, Santo Domingo, France, Germany, Greece, the Netherlands, Portugal, Russia, Salvador, Sweden and Norway, and Tripoli.

5. The right of asylum, (a) in legations, (b) on board vessels of war, (c) on board merchant vessels.

(a) In the United States and in Europe, with the exception of Spain, the rule may be considered as established that a legation does not grant asylum either to ordinary criminals or to persons charged with offenses against the state. While consuls have not the immunities or extraterritorial rights that pertain to diplomatic agents, a usage has grown up to such an extent in certain countries with respect to an asylum in consulates that its recognition as a fact cannot be avoided.



The United States does not sanction the usage of granting asylum. It discourages it, but is not disposed by itself, and independently of all others, to prohibit its representatives granting it.

(b) The U. S. Naval regulations, 1900, direct as follows: Article 308. "The right of asylum for political or other refugees has no foundation in international law. In countries, however, where frequent insurrections occur and constant instability of government exists, usage sanctions the granting of asylum, but even in the waters of such countries, officers should refuse all applications for asylum except where required by the interests of humanity in extreme or exceptional cases, such as the pursuit of the refugee by a mob. Officers must not directly or indirectly invite refugees to accept asylum."

(c) Merchant vessels, having no immunity from foreign jurisdiction, cannot properly grant asylum to political or other refugees.

In the arguments advanced, the flag seems to be the chief thing considered. Thus far the claim has only been advanced in the cases of political refugees who, having escaped to another country, embarked on a merchant vessel for passage to a third country, by a voyage which included calls at the ports of their own country. See cases of *Gomez*, *Barrundia*, *Sotelo*, etc.

#### 6. Jurisdiction over extraterritorial offenses.

A number of European states, among them being France, Belgium, Germany, Austria, Italy, the Netherlands, Sweden and Norway, and Russia, allow their tribunals to take cognizance in certain cases of crimes committed by foreigners in foreign jurisdiction or out of their territorial bounds. This claim is not favorably looked upon by the leading American and English publicists, and is rejected by a number of states, including the U. S. The last precedent in this country was in the *Cutting* case. Secretary Bayard wrote: "The government is still compelled to deny what it denied on the 19th of July (1886) and what the Mexican Government has executively and judicially maintained, that a citizen of the United States can be held, under the rules of international law, to answer in Mexico for an offense committed in the United States, simply because the object of that offense happened to be a citizen of Mexico."

7. Extradition. Kindred to the subject of asylum in legations and vessels, is the question of the right of asylum of fugitives who reach the territory of a foreign state. Extradition treaties are of recent origin. Extradition is not a matter of international duty, but the opinion of the civilized world favors it. A large number of the treaties exempt the citizens of the state on whom the demand is made. This exemption has been maintained on various grounds. One being that, by the laws of most countries, provision is made for the trial and punishment of their citizens for offenses committed abroad, and that a state should not deliver up one of its citizens for offenses to be tried by a foreign tribunal when he can be punished at home under its own laws. By England and the United States alone are offenses, even when committed by their subjects or citizens, treated as entirely local. These two states have been willing to stipulate for the rendition of their own subjects or citizens. The U. S. for a time refused to enter into extradition treaties on any other basis, but since 1852, this objection appears to have been waived, and a large number of our treaties of extradition exempts each party from the obligation of surrendering its own citizens.

Under such a treaty, it was held, by Secretary Frelinghuysen, that the President could not exercise any discretion as to surrendering a citizen of the U. S. In a similar case in 1893, the Federal District Court of Texas discharged a prisoner on the same grounds as stated by Secretary Frelinghuysen, but the question has not been passed on by the Supreme Court.

8. Exterritorial acts done by order of a state. The state ordering the violation of territory, and not the individual, is to be held responsible. See the following cases, the *Caroline*, the *Virginus*, seizure of *St. Mark's* etc. (Snow's Leading Cases.)

27.\* What is meant by the doctrine of extrterritoriality?

The fiction that a diplomatic agent carries with him a portion of his own country and thus constructively is still under the jurisdiction of his own state.

The law of nations, however, is now so well established upon the immunity of diplomatic agents that the tendency is now to explain this immunity on the grounds of expediency, freedom from local

jurisdiction being necessary for the full and efficient performance of their duties.

**28.\*** Are the public and private vessels of a nation a part of the territory, either on the high seas or in a foreign port?

Public vessels always; private vessels when on high seas, have some of the attributes of territory.

**29.\*** Give the status of public and private ships.

Public vessels:—of a sovereign state coming within the jurisdiction of a friendly nation are exempt from all forms of process in private suits. Nor will such ships be seized or in any manner interfered with by judicial proceedings in the name and authority of the state, to punish violations of the public laws. In such cases the offended state will appeal directly to the other sovereign. Any proceeding against a foreign public ship would be regarded as an unfriendly, if not a hostile, act in the present state of the law of nations. (Wheaton.)

The tribunal of arbitrators at Geneva held that the principle of extritoriality accorded to vessels of war is not an absolute right, but is founded on the principle of courtesy and mutual deference between different nations.

“Entrance into the harbors of the state may be denied to any ship refusing to respect the local laws; her stay may be limited; she may be ordered to depart, and if necessary, force may be used to expel her, as in the case of an ambassador.” (Snow.)

“The immunities of a vessel of war belongs to her as a complete instrument.” (Hall.)

If any officer or member of the crew while on shore should make himself culpable by an infraction of the laws of the country there is no doubt whatever that the local authorities have jurisdiction over such persons while they remain on shore and may cause them to be arrested before they quit the land, and to be punished according to their own laws, but the commanders of the vessels should be informed immediately of the arrest, and the causes which led to it, in order that either they or the diplomatic agents of their government may make all necessary endeavors to procure that the

persons accused should be returned to them, or to watch the manner in which they are treated and tried. (Pomeroy.)

If the offender, however, escapes to his vessel, he can not be pursued or apprehended there. The sovereign of a port has no right of seizure or arrest on board of foreign vessels of war in any case whatever.

Private ships:—See question 26, paragraph 4; also case of *Wilddenhus*, 120 U. S. Reports, 1.

**30.\* What are public ships?**

Those owned and operated by a government. In the United States the following are the public vessels:

- I. Vessels of the U. S. Navy.
- II. Revenue marine.
- III. Coast survey.
- IV. Fish Commission.
- V. Light house tenders.
- VI. Vessels of the U. S. Army.
- VII. Vessels of the Mississippi River Commission.

**31.** You are in command of a cruiser at anchor in a foreign port. An enlisted man while on shore on liberty commits an offense against the local laws. What action would you take under the following circumstances: (a) He is arrested on shore and the local authorities prepare to try him; (b) He escapes and returns to the ship and the local authorities demand or request his delivery to them for trial and punishment; (c) Later he is taken out of one of the ship's boats at the landing by the local police.

(a) Have an officer communicate with the accused, see that he has proper facilities for making any defense he has to offer, and to watch the manner in which he is treated and tried. Protest if the trial and treatment are not fair. Report the circumstances to the Navy Department.

(b) I would refuse to surrender the man, informing the authorities that they must make their request to the United States Government through the proper diplomatic channels. If I considered the circumstances warranted and the local authorities would cause

the necessary witnesses to appear, I would have the man tried by a Summary Court Martial, or report the matter to the Commander-in-chief or to the Navy Department, with recommendation that the man be tried by a General Court Martial.

Referring to the duties of the Captain, the U. S. Naval regulations, 1900, state:

Article 431. "He shall not permit any ship of the Navy under his command to be searched by any person representing a foreign state, nor any of the officers or crew to be taken out of her, so long as he has the power to resist. If force is used, it must be repelled."

(c) Taking the man from a ship's boat would be just as much a violation of the rights of the United States as taking from the ship itself.

U. S. N. R., 1900, Article 432. (2) "The boats of a ship of war will be regarded in all matters concerning the rights, privileges, and comity of nations as parts of the ship herself."

I would demand the prompt return of the man and redress for the unlawful act of taking him from the ship's boat. If refused, it would be a matter of diplomatic complaint.

There might be circumstances, depending on the country, lack of telegraphic facilities, imminent danger of the man being summarily executed, etc., which would cause me to use force to retake him.

32. In command of a cruiser in a foreign port, a refugee who is undoubtedly an American citizen comes on board and claims the protection of the American flag. The local authorities request his delivery and charge him with a non-political crime. The refugee admits that he is not a political refugee, but claims that he has been charged unjustly and that he would not receive a fair trial on shore. What action would you take?

As a general rule I would refuse to receive the man. There might, however, be circumstances which would cause me to receive and protect him, on the ground of the right of protection to United States citizens abroad in weak or in semi-civilized or barbarous states, or such circumstances as are referred to in Article 308, U. S. N. R., on the ground of humanity.

33. When a political refugee has embarked in the territory of a third power in a merchant vessel of the United States as a passenger, and it appears that his life is in danger upon the entry of said ship into other territorial waters, is he entitled to the protection of the commanding officer of a U. S. vessel of war.

No. The question would only be raised in the waters of weak or semi-civilized states. It is well settled in international law that in principal civilized states a merchant vessel has no immunity from the local laws, except by the terms of a treaty or consular convention.

If the circumstances were such that the man should be protected as an act of humanity, it would be best to have the man come on board the man of war during the stay of the merchant steamer in the port where he is in danger, and then the man of war to proceed to sea with the merchant steamer and send the man back to her on the high seas. See cases of Gomez, Barrundia, Sotello, etc.

34. The U. S. S. Madawaska is lying in the port of Realejo, Peru, for the protection of American interests. A revolution has been in progress in that country for some time, with alternate victory and defeat for each side. The ultimate conqueror cannot be foreseen.

Late one night a shore boat came alongside the Madawaska with a letter to the commanding officer, Captain Decatur. It is to be urgent, and an immediate reply is requested. Its import is as follows:

"The rebel forces took the capital to-day and established a government. Those of my troops not now prisoners, have fled into the country and are completely routed. I have no hope of reorganizing them. I came here to Realejo for personal safety. The rebels are seeking me everywhere, and, if found, my life will be in danger. Will you do a humane and generous act by shielding me from the rage of an infuriated mob, and giving me passage to the nearest Chilean port at your convenience? I cannot abide in safety in my present shelter later than daylight, and, if you

decide to receive me, I will come aboard before that time. With sentiments of the most distinguished consideration.

ALFONSO QUALQUIERA, *President of Peru.*"

Qualquiera became President about a year previously, and it was immediately alleged that he obtained the office through the grossest fraud, intimidation, and bribery in the election, and that, after inauguration, he began a course of terrorism, imprisoning and even executing (upon false testimony) some of those most prominent in opposing his election. This was the cause of the uprising which had just succeeded in driving him from power. All this was well known to Captain Decatur, as he had been some months in port, and the above statements were matters of common notoriety.

What should Captain Decatur do under the circumstances?

(Situation 2, 1896, U. S. N. W. C.)

"Captain Decatur may receive Qualquiera if, in his opinion, the life of the latter is in danger. Of this, Captain Decatur must be the judge. There is no question of right involved. It is simply one of humanity.

The general policy of the United States has been to discourage the practice of granting asylum.

Having received Qualquiera on board, Captain Decatur should not deliver him up, no matter on what ground his surrender may be requested. Criminal offenses are often charged against political refugees as a pretext to prevent their receiving asylum. Under such circumstances the Peruvian Government would have but one resource, and that would be to prove its case through the regular extradition system. With that Captain Decatur has nothing to do.

Had Qualquiera been a plain citizen, an accused criminal fleeing from legal pursuit, he should not have been received on board; but if as a private citizen he had been trying to bring about a change of government, and failing, had sought refuge on the *Madawaska* from his enemies who were in hot pursuit, he would be entitled to the same asylum as any other political refugee, and should not be delivered upon the request of the Government.

A man accused of a crime, not political, should not have been received on board, and should be put on shore. There is no necessity for examining the extradition laws in such a case.

It is of course, possible that even in such a case, the question of humanity might govern. The local authorities have no right to follow on board or apprehend an accused criminal after he is once on board a vessel of war. If the commander is satisfied, from the anarchical state of the country, that the accused can not have a fair trial, he might refer the matter to his government, and decline to deliver the accused except through the request of the local government through the regular channels of extradition.

The custom of foreign ships of war affording shelter to political refugees is very objectionable, and would not be tolerated by any stable civilized government. The complete sovereignty of every nation within its own territory and territorial waters is a cardinal principle of international law, and the right of asylum can not be admitted without derogation of this principle."

35. A revolutionary outbreak occurs in a South American state. The officer in command of a United States ship of war lying in the harbor of the capital city of the South American state is asked by a messenger from the President of that state whether he will receive the President and his cabinet on board the ship of war in case they are in serious danger of personal injury from attack by the insurgents.

What should be the reply of the officer?

(Situation 2, 1902, U. S. N. W. C.)

"The commander of the ship of war should reply that his Government discountenances the practice of granting asylum on board ships of war, and also that the regulations of the service allow the grant of asylum only under extreme and exceptional circumstances, of which he as commander must judge in the actual emergency should such emergency unfortunately arise in regard to the President and his cabinet while he remains in port. The commander could in no case promise asylum for a future time of which the conditions could not be foretold."



36. Being in command of a vessel of war and senior officer present in the harbor of Chemulpo, Korea, the following circumstances take place:

A coup d'etat has occurred at Seoul, the capital, distant by land about thirty miles from Chemulpo; by river about sixty miles. A marine guard has been sent to protect the United States legation at Seoul, the legation being three miles distant from the river bank.

Refugees belonging to the political party which were ousted from the palace by the coup d'etat have taken refuge within the legation grounds. The legation is the property of the United States.

After a stay of some weeks, the United States minister resident proposes that you send a guard of marines to take the political refugees from the legation, escort them to Chemulpo, give them asylum on board ship, and take them to Shanghai, for which port you are about to sail.

It is believed that the lives of the refugees are in danger outside of the limits of the United States legation, and the Korean Government refuses to guarantee their safety, either as to life or liberty, outside of the legation limits, nor will they commit themselves as to an undisturbed passage of the refugees to Chemulpo.

The river is navigable for steam launches.

What is your answer to the request of the United States minister?

Upon what grounds and usages do you base your reply?

(Situation 1, 1899, U. S. N. W. C.)

"This is a case which has occurred in actual service. The answer to the request should be that, unless otherwise instructed by superior authority, you decline to comply with the request or proposal of the minister at Seoul.

The grounds upon which this decision would rest are as follows:

1. There is no danger existing within the limits of the United States legation at Seoul to the lives of the refugees. There is a marine guard at the legation, and the forces at the legation can be increased from the ship when necessary to defend the legation and protect the inmates and the property of the United States from any material injury.

2. The armed escort of Korean refugees, through Korean territory, who are in a state of revolt against the government, against the wishes of the actual Korean Government, is a violation of their territory and an affront to their sovereignty which is not justified upon the grounds of humanity or necessity. Any encounter or loss of life resulting from such an escort would be needless and unjustifiable, as the lives of the refugees are safe while within the limits of the legation.

The privilege of asylum does not exist as a right. At best it is an exercise of humanity to suppliants who are in danger of their lives. Such humanity is here given by the shelter afforded within the legation limits. Anything like an armed protection and escort without these limits partakes of the nature of aggression toward the *de facto* Korean Government. Even the initiative of asylum is not sanctioned by our Government, and the regulations of the Navy, Article 308, expressly state that officers of the Navy must not directly or indirectly invite refugees to accept asylum.

The printed instructions to the diplomatic agents of the United States in 1888 also say: "In some countries, where frequent insurrections occur and consequently instability of government exists, the practice of extritorial asylum has become so firmly established that it is often invoked by unsuccessful insurgents, and is practically recognized by the local government to the extent even of respecting the premises of a consulate in which such fugitives may take refuge. This Government does not sanction the usage, and enjoins upon its representatives in such countries the avoidance of all pretexts for its exercise. While indisposed to direct its agents to deny temporary shelter to any person whose life may be threatened by mob violence, it deems it proper to instruct its representatives that it will not countenance them in any attempt to knowingly harbor offenders against the laws from the pursuit of the legitimate agents of justice."

### **JURISDICTION ON THE HIGH SEAS.**

37. What jurisdiction has a state over its property and citizens on the high seas, when out of the territorial jurisdiction of any other state, and when carried on under its own flag?

Exclusive in times of peace, and this jurisdiction applies to foreigners who happen to be on board as well as to citizens or subjects of the state whose flag covers the vessel, except in the following cases:

- a. Piracy.
- b. When a vessel is chased beyond the 3 mile limit for violation of municipal law.
- c. Some international offense made so by general or special compact, such as the slave trade.
- d. Cases of collision, salvage, some marine contracts, etc., arising under the common law of nations, *may* be tried in the Admiralty Courts of the port first proceeded to.

**38.** How is the national character of a vessel determined?

By the national character of the actual owner.

**39.\*** What papers must a merchant vessel carry?

- I. Register, sometimes replaced or accompanied by a (a) passport issued by the sovereign authority; or (b) a Sea Letter issued by local authorities of the sailing port.
- II. Charter Party, if chartered.
- III. Log book.
- IV. Bills of lading, or duplicate receipts of cargo from masters to shippers.
- V. Invoices or detailed statements of separate lots of goods.
- VI. Manifest or general statement of cargo.
- VII. Clearance, or permission to sail.
- VIII. Muster roll.
- IX. Shipping articles.
- X. Bill of health.
- XI. Bill of sale, if ship has been sold by citizen of one country to citizen of another, with consular certificate
- XII. Certificate of inspection.
- XIII. Officers' licenses.
- XIV. Passenger list, if passengers are carried.
- XV. Licenses to carry oil and powder. (If U. S.)

**40.\*** What papers are necessary to determine the nationality of a merchant vessel?

The papers vary in different states, but in general terms they may be said to consist, for vessels engaged in foreign trade, of:

1. Certificate of registry.
2. Muster roll of crew.
3. Log book.
4. Shipping articles.
5. Charter party.
6. Invoices of cargo, and
7. Bills of lading.

**41.** What is the official voucher of a merchant vessel from a country having a regular office of registry?

Certificate of registry.

**42.\*** What information should the certificate of registry contain?

Name of country.

Number. (International code.)

Name of owner or owners.

Name of vessel.

Name of master.

Date when vessel was built.

Dimensions of vessel, masts, number of decks, etc., tons measurement, capacity and gross tonnage.

Name of rig.

Date of registry.

Signature of Commissioner of Navigation, Naval Officer, and Collector and seals of the above.

**43.\*** Is the national flag sufficient evidence of the national character of a vessel?

No, only presumptive.

**44.** Is the national flag and register conclusive evidence of the national character of a vessel?

No. They are *prima facie* evidence. A nation has the right to go behind the register to establish the fact of ownership and consequent jurisdiction. See the case of the *Virginus*, which carried an American flag and had an American register, but it was proved that the owners of the *Virginus* were Spanish subjects, that her American register was fraudulent, and consequently she had no right to carry the American flag and claim its protection.

**45.\*** A foreign built ship has been sold to a citizen of the United States in a foreign port; can she be placed under the U. S. flag and sailed as a U. S. vessel? Is she entitled to the protection of a public vessel, and when would she forfeit such protection?

Yes; she can carry the flag and is entitled to protection as long as she remains in foreign waters, and has a consular certificate to the bill of sale.

**46.\*** What vessels are entitled to papers or documents as vessels of the United States.

1. Those built in the United States for citizens of the United States and remain in continuous, exclusive ownership of citizens of the United States.

2. Those built in the United States under foreign ownership, in whole or in part, and recorded as such, upon their becoming the property of citizens of the United States exclusively.

3. Vessels captured in war by citizens of the United States, lawfully condemned as prize, and wholly owned by citizens of the United States.

4. Vessels adjudged to be forfeited for a breach of the laws of the United States and purchased and owned wholly by citizens of the United States.

5. Vessels under a foreign flag, wrecked in the United States, and purchased and repaired by a citizen of the United States, if the repairs are equal to three-fourths of the cost of the vessel when so repaired.

6. Vessels of the United States government sold to a citizen of the United States.

7. Steamboats for employment only in a river or bay of the United States, owned wholly or in part, by an alien resident within the United States.

In addition to the above there are certain foreign built vessels which have been granted registers as vessels of the United States, with all rights as such, by name in special acts of Congress.

47.\* Under what conditions are foreign built vessels given United States papers? (Meaning all the papers.)

See question 46, 3, 4, and 5.

48. What vessels are not entitled to documents as vessels of the United States?

1. Vessels built in a foreign country.
2. Vessels built in the United States under foreign ownership, in whole or in part, and not recorded as such; or vessels sold, in whole or in part, to citizens of other countries after having been documented as vessels of the United States.
3. Vessels which have not been continuously in command of a citizen of the United States.
4. Vessels owned, in whole or in part, by citizens who usually reside abroad, during the continuance of such residence, unless they are consuls of the United States, or agents for or partners in some trading house consisting of citizens of the United States, actually carrying on trade with the United States.
5. Vessels owned, in whole or in part, by naturalized citizens residing for more than one year in the country of their origin, or for more than two years in any foreign country, unless they be consuls or other public agents of the United States. But such vessels may be documented anew upon sale in good faith to a resident citizen of the United States.
6. Vessels which were authorized to sail under a foreign flag and to have the protection of any foreign government during the rebellion.
7. Vessels of the United States seized or captured and condemned under the authority of any foreign power, even after again

becoming the property of citizens of the United States, unless such citizens shall have been the owners at the time of seizure or capture, or shall be the executors or administrators of such owners, and shall have regained the ownership of such vessel by purchase or otherwise.

**49.** Can a foreign built yacht owned by a citizen of the United States fly the American flag in waters of the United States?

Yes, under the same laws referred to in Question 45. Yachts are not allowed to transport merchandise or carry passengers for pay. Such a yacht has no nationality. It may fly the American flag as an indication of ownership and for the due protection of property of an American citizen.

**50.\*** When can a foreign ship be seized on the high seas in time of peace?

1. For piracy.

2. When a merchant vessel, or some person on board, commits an offense against the laws of a foreign territory while within that territory, the vessel may be pursued outside of the 3 mile limit and there seized. This can only be done when the chase is commenced while the vessel is within the 3 mile limit or has just escaped beyond it. If the vessel escapes from her pursuers, she can not be taken at another time upon the high seas by ships of the offended state.

**51.\*** If a private vessel is chased for a crime committed in a foreign port into the high seas and there arrested, is there any violation of territorial rights committed thereby?

No.

**52.\*** If an individual commits a crime on foreign territory on shore, may he be chased across the border into another country and then arrested?

No.

**53.\*** If a private vessel is seized or confiscated by local authorities in a foreign port, does that act necessarily constitute an invasion of territory?

No, not if the act is lawful and justifiable.

**54.\*** Is the seizure and condemnation of a vessel for breach of customs regulations, or her seizure and sale by a creditor abroad, considered as an invasion of territory.

No.

**55.** A European vessel anchored in the Providence River, below the city, takes in a cargo of arms and ammunition for Venezuelan insurgents, and is regularly cleared in this respect for La Guayra, Venezuela, which is in the temporary possession of the insurgents, who are not as yet recognized by us as belligerents.

After getting the necessary clearance papers a body of men, uniformed, apparently organized and officered, but not under arms, are taken on board the steamer at the last moment, and the ship sails for La Guayra.

You are at the time in command of a vessel, the Hudson, at anchor in the outer harbor of Newport, R. I. You receive orders from the Commandant of the Naval Station to carry out the telegraphic orders just received by him from the Department, which read as follows: "Send Hudson to intercept and bring back steamer Hohenzollern, if sailed from Providence; if not overhauled within limits of waters of United States, follow her and act in accordance with usages of international law, finally proceeding to Hampton Roads."

Not having steam up in the Hudson, the Hohenzollern succeeds in getting out of the West Passage as you are getting under way, and a chase follows in which you lose her by nightfall.

About 10 o'clock the next morning, a long distance off shore, you sight her steaming leisurely to the southward.

What action do you take under the circumstances, and upon what grounds?

What action would you have taken if you had overhauled her



at a distance of ten miles off shore when in continuous pursuit, and upon what ground?

(Situation 4, 1899, U. S. N. W. C.)

"The vessel should be conducted to a port of the United States for a violation of the municipal law.

As the continuity of the chase is kept up through the night, and the disappearance of the vessel is due to the fact of darkness alone, it is only proper to consider the vessel as having been continuously pursued since her violation of the municipal law.

The arrest of the vessel, if found within 10 miles of the coast, is authorized by usage, as she has been continuously pursued for a violation of municipal law within the territorial waters of the United States.

Among the rules proposed and formulated by the Institute of International Law in 1894, was one declaring that in case of an offense committed within the jurisdiction of a territorial power, it might continue a pursuit upon the high seas commenced in its waters; but the right to follow and capture a vessel was to cease upon the pursued vessel gaining a port of a third power or one of its own country."

56. In command of a United States man-of-war cruising along the west coast of South America you arrive in the vicinity of the port of Talcahuano. When five miles off the coast you discover that an American merchantman is being chased, at that distance from the nearest land, by a public vessel of the nationality of the port. She is arrested and taken into port, and upon inquiry you ascertain that it was for landing Chinese coolies in violation of a local law. You follow these vessels into port, and after making inquiries concerning the matter, take up a certain line of conduct, which please state.

(From situation 1, 1895, U. S. N. W. C.)

"As the pursuit and seizure may be considered permissible, under the circumstances which are duly ascertained after investigation, you do not interfere with the arrest of the vessel."

### PIRACY.

#### 57.\* What is piracy?

A pirate is a highway robber of the sea. The following acts are recognized as piratical:

(a) Robbery or attempted robbery of a vessel, by force or intimidation, either by way of attack from without, or by way of revolt of the crew, and the conversion of the vessel to their own use.

(b) Depredations upon two belligerents at war with one another under commissions granted from each of them.

(c) Depredations committed at sea upon the public or private vessels of a state, or descents upon its territory from the sea by persons not acting under the authority of any politically organized community, notwithstanding that the objects of the persons so acting may be professedly political.

Acts of piracy have one common ingredient, which is that no state can or should be held responsible for them.

A state may declare any act it pleases piracy, but that does not make it piracy by the law of nations. Thus England and the United States have declared the slave trade to be piracy; and the United States in addition has affixed the same character to certain other criminal offences, when committed on board of our merchant vessels, but in these cases other nations are not in any way concerned or bound and have no jurisdiction over the offenders.

In the United States the following constitute piracy:

Murder or robbery or any other crime on the high seas that is punishable with death on shore.

Piracy, to deliberately burn, cast away or destroy any ship.

Every citizen who commits murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince or state, or on pretense of authority from any person, is notwithstanding the pretense of such authority, a pirate.

**58.\* Is slave trade piracy by the law of nations?**

No. The right of visitation and search of foreign vessels and their capture as slavers in time of peace exists only by special treaty or convention.

**59. Are armed vessels of insurgents on the high seas pirates?**

No. Part of the definition of piracy applies to them, but a very important part does not.

Until very recently insurgents have had no standing in international law. In older treatises, and in decisions of courts, they have been referred to as pirates if they were found on the high seas. The lawful government usually tries to impress this character on its rebels. Claims of this nature were made by Great Britain during our Revolution, by the Federal Government during the civil war of 1861-1865, and by the Government of Spain during the insurrection in that country of 1873.

One of the most noted cases of recent days in our courts was that of the *Ambrose Light*, a brigantine captured April 1, 1885, by the U. S. S. *Alliance* in the Carribean Sea.

She legally belonged to one of the chief military leaders of the insurrection against the Colombian Government; no one of her officers or crew was a citizen of the United States; she was engaged upon a hostile expedition against Cartagena, Colombia, and was designed to assist in the blockade and siege of that port by the insurgents.

The judgment of the court was that in the absence of any recognition of these insurgents as belligerents, the *Ambrose Light* had been lawfully seized as bound on an expedition technically piratical.

The ship was released, however, on the ground that the Secretary of State, by this note to the Colombian Minister of April 24, 1885; had recognized by implication a state of war.

This judgment has called forth much criticism and the weight of opinion would seem to be against the position that insurgent vessels not molesting the ships of other nations may be treated as pirates.

### INTERVENTION.

60. On what grounds is a state justified in intervening in the internal affairs of another state?

For self defense or self preservation.

61. On what other grounds have states intervened in the affairs of others?

Frequent interventions have taken place on the pretended grounds of humanity and religion, but recent practice seems to restrict the right to one case, that for the purpose of self defense or self preservation.

### NATIONALITY.

62. Who are citizens of a state?

"Who are citizens, on what conditions persons are admitted to citizenship, and on what conditions citizens may expatriate themselves, are questions of constitutional law decided by each state for itself. The conflict of the laws of the several states have brought about some of the most difficult problems of international law."

"Most countries have laws by which foreigners may be admitted to citizenship, but with reference to the right of expatriation there have been many sharp disputes and even war." (Snow.)

63. Can a person lose one nationality without gaining another?  
Yes.

64. What are the rights and duties of aliens?

Persons entering upon a foreign territory submit themselves to the jurisdiction of that country. They are entitled to the same protection that citizens receive both as to life and property, and must pursue their remedies in the same way through the courts of law. The right to hold title to real estate is dependent upon the laws of the state in which the land is situated. Aliens

are not liable, as a rule, to military service, but they can, if allowed, voluntarily enlist. They can be called upon for service in the militia or local police to maintain social order, provided the duty is police and not political, and they can be called upon to take arms against an external enemy, if such enemy threatens the existence of social order, as in the case of an attack by savages or uncivilized peoples.

Aliens are subject to local allegiance whether the government is duly recognized or is only *de facto*. They are not exempt from taxation unless they are foreign diplomatic agents.

Aliens may be expelled or excluded from a country, if the state should so direct. This right is one of the attributes of a sovereign state. (Snow.)

65. You are in command of a cruiser at anchor off Sandy Point, Straits of Magellan. The aborigines (savages) threaten an attack and massacre. (a) The governor begs you to land a force and otherwise come to his aid in repelling such an attack. (b) There are several American citizens residing at Sandy Point, transacting business and owning property there as aliens. The governor compels them to join a military company to defend the town. They question his right and appeal to you. (c) A large military detachment arrives from Chile, convoyed by the "Arturo Prat" and two fast, protected cruisers. The trouble with the Indians, and the danger from revolt on the part of the convicts at large, being imminent and serious, the governor, who is also senior military officer, declares martial law, and among other things proceeds to seize the property of the American residents for military purposes. Upon their violent resistance to this action, they are arrested and tried and punished by a military commission, the civil courts being suspended. What action do you take in each case?

(a) "Upon the grounds of courtesy and humanity, offer and give all possible assistance to the governor during the time of the threatened attack by the savages of that portion of Patagonia. At his request, land what force is available for this purpose."

(b) "As to the Americans residing at Sandy Point, who are also property owners, and who fail to see the natural and moral obliga-

tion resting on them to assist in the defense of the place and their own lives and property, your attitude towards them should be decided in its nature. For the defense of a place against savages, or against any force opposed to order and civilization, the governor has a right and duty to call on all residents, aliens or otherwise, to assist in the protection of the community and the maintenance of good order and public safety. The resident aliens are entitled to receive police and other protection for their lives and property, and in turn it becomes their duty to assist in measures taken for the common defence against savages and for the preservation of the lives and property in the community threatened by foes to civilization.

"An exemption from police duties is sometimes provided for citizens or subjects domiciled in foreign countries, but this is not a case for such exemption, and no treaty of this kind exists so far as is known between Chile and the United States.

(c) "With the arrival of naval and military re-inforcements to the colony from Chile the governor is enabled to take a firmer tone. With a declaration of martial law or state of siege, as it is more generally known in Latin countries, the commander of the place is judge of what may be considered necessary for the public safety, and the necessity and emergency is sufficient reason for the seizure of private property of any resident, whether alien, or subject, for military purposes. Under these circumstances, with or without the promise of compensation and indemnity, the property of the American residents may be taken for the common good.

"Any resistance to the government is unjustifiable, and from motives of self preservation and order the Chilean military authorities may take such measures to suppress and punish resistance to legal authority as the circumstances justify. The rule of the commander is absolute under the circumstances, tempered only by the humane demands of the times and the fair treatment due to residents, alien or otherwise. The conduct of the Americans under the circumstances is unjustifiable and should receive no countenance or support from you as naval commander or representative of the United States.

"When strangers enter a state they must be prepared for the

risks of intestine war, because the occurrence is one over which from the nature of the case the government can have no control; and they cannot demand compensation for losses or injuries received, both because, unless it can be shown that a state is not reasonably well ordered, it is not bound to do more for foreigners than for its own subjects, and no government compensates its subjects for losses or injuries suffered in the course of civil commotions, and because the highest interests of the state itself are too deeply involved in the avoidance of such commotions to allow the supposition to be entertained that they have been caused by carelessness on its part which would affect it with responsibility towards a foreign state.

“Foreigners must in the same way be prepared to take the consequences of international war.”

(From situation 2, U. S. N. W. C., 1895.)

### **PROTECTION OF CITIZENS IN FOREIGN COUNTRIES.**

**66.** When has a state a right or duty to protect its citizens abroad?

When the foreign state concerned is unable or neglects to punish its citizens for offenses which they commit against aliens.

**67.** In what form may the intervention be for the protection of citizens in a foreign country?

(a) In the case of states possessing stable institutions and whose courts are always ready to redress the injuries of individuals, all that is ordinarily done is to call the attention of the government through diplomatic channels to any seeming failure of justice in respect to aliens; and if a dispute follows it is settled diplomatically or by war.

(b) In weak states, or states whose internal sovereignty is unstable, foreigners must often be protected, not by diplomatic representation, for there is no time for that, but by the immediate employment of the naval forces of their own country.

There can hardly be said to be a fixed rule of international law

upon this subject, it being exceptional in its nature, as international law presumes that all sovereign states are capable of enforcing their laws within their jurisdiction.

In this class of states, whenever civil commotions occur, it is usual for foreign nations to send ships of war to the scene of the disturbance for the protection of the lives and property of their citizens who may be residing there.

(c) In semi-civilized or barbarous countries, foreigners are by treaty largely exempted from local jurisdiction. In such countries the consuls of the foreign states are clothed with extensive powers, and it is customary for the ships of war to aid them in the protection of their own citizens, and at times those of other civilized states. Intervention in such countries is not so grave a question in relation to international law, for those countries have not the full rights of sovereign states. (Snow.)

68.\* Under what circumstances would landing an armed force in a foreign country be justified?

(a) For exercise, target practice, funeral escort, etc., with permission of the local authorities.

(b) On the ground of the right of self preservation, which includes the protection of the state, its honor, and its possessions, and the lives and property of its citizens against arbitrary violence, actual or impending, whereby the state or its citizens may suffer irreparable injury. Force must be used only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required. It should never be exercised with a view to inflicting punishment for acts already committed.

Whenever, in the application of the above principles, it shall become necessary to land an armed force in foreign territory, on occasions of political disturbances, where the local authorities are unable to give adequate protection to life and property, the assent of such authorities, or of some one of them, shall first be obtained, if it can be done without prejudice to the interests involved.

See Articles 304, 305, 306, and 307, U. S. N. R., 1900.



**INTERNATIONAL AGENTS OF A STATE.****69. Who are the international agents of a state?**

The person within its own borders to whom the management of foreign affairs is committed; Diplomatic agents; Consuls; Naval officers.

Diplomatic Agents:—

Ambassadors,  
Ministers plenipotentiary and envoys,  
Ministers resident,  
Chargés d'affaires.

Consular officers:—

Agents and consuls-general,  
Vice consuls-general,  
Deputy consuls-general,  
Consuls,  
Vice consuls,  
Deputy consuls,  
Commercial agents,  
Vice commercial agents,  
Deputy commercial agents,  
Consular agents.

**70. Is there an absolute obligation to receive diplomatic agents?**

No, but the custom is so deeply rooted in the practice of nations that a refusal would require grave reasons for its justification, and would be looked upon as so unfriendly an act as to be little removed from hostility.

**71. May a state refuse to receive an ambassador or other diplomatic agent on special grounds?**

Yes. Some Protestant states refuse to receive legates or nuncios of the Pope; a state is not generally willing to receive one of its own citizens as an ambassador of a foreign state; finally, a person may be for various reasons or causes *persona non grata*.

**72.** May a state dismiss a diplomatic agent accredited to it?

Yes, if for any reason he become *persona non grata*.

**73.** Must the grounds of objection be communicated to the state which the diplomatic agent represents, and must they be such as to justify the demand for his recall.

It was so held by our Government in the case of Minister Egan, whose recall was demanded by Chile in 1892.

**74.\*** What are the general duties of consuls?

To watch over the commercial rights and privileges of their nations. Their ordinary duties may be embraced under four heads:

1. Acts pertaining to vessels, to masters and seamen or to passengers and emigrants; also acts relating to shipwreck, the apprehension of deserters, and the relief and return of seamen.

2. Acts relating to goods for export to the country he represents, such as authentication of invoices, granting of debenture certificates, etc.

3. Acts in behalf of the government which employs him, including commercial and hydrographic information collected, and reports as to matters of general or special importance occurring within or near his consular district.

4. Acts in behalf of the citizens of the country he represents who are abroad and within his district; these acts include matters relating to deaths, notarial acts, administration of estates, and the charge of the effects of deceased citizens.

**75.** Are consuls ever clothed with diplomatic character?

Sometimes consuls-general are, being both consuls-general and *chargés d'affaires*. Some European governments refuse to receive persons clothed with these two characters. The United States have a number of such consuls-general who, for the most part, are residents in semi-civilized countries. Again, consuls or consuls-general in colonies distant from the mother country are often permitted to make diplomatic representations to the local government or authorities and to do other things which are usually per-

formed by diplomatic agents. The only agent and consul-general of the United States who is at Cairo, Egypt, enjoys a quasi-diplomatic position, so far as the Porte may consent thereto.

**76.\*** Would the commander of a naval vessel have consular powers in a foreign port in the absence of a consular officer?

Only in so much as relates to mariners of the United States.

**77.\*** Are the powers of a consul, or the consular powers of a commanding officer of a vessel of war, ever diplomatic in character?

As to consuls, see question 75. As to naval officers, the U. S. Naval regulations, 1900, state as follows:

Article 303. In the absence of a diplomatic or consular officer of the United States at a foreign port he has authority:—

(a) To exercise the powers of a consul in relation to mariners of the United States.

(b) To communicate or remonstrate with foreign civil authorities as may be necessary.

(c) To urge upon citizens of the United States the necessity of abstaining from participation in political controversies or violations of the laws of neutrality.

**78.** What are the privileges and immunities of consuls? Do they have the same immunities as diplomatic agents?

They do not have the immunities of diplomatic agents. As a rule they are amenable to the civil and criminal jurisdiction of the country in which they reside. In the United States, they are under the jurisdiction of the United States courts, but although not under the jurisdiction of state courts they may maintain a suit in any such court. Either by custom or treaty, or both, they have the right to place the arms of their country over the door of their official residence and to hoist its flag over the consulate. As a matter of comity, they are usually exempt from personal taxes, from having soldiers quartered in their houses, and from jury duty. The archives and official papers of the consulate are held to be inviolate.

79. At a port in China, which is held under lease by a European state, and at which there is no consul of the United States, a nearby American consul accredited to China attempts to exercise his ordinary extraterritorial jurisdiction. His authority is denied by a representative of the European state, and he appeals to the commander of an American war vessel in port to support him in the exercise of his authority.

What position should the commander take?

(Situation 3, 1902, U. S. N. W. C.)

"The commander should take the position that he could not support the consul accredited to China in the exercise of authority within territory thus held under lease by a European power.

The commander can assume that he himself is authorized to exercise those consular functions which are under such circumstances specifically delegated to naval officers by his government." See Article 517, U. S. N. R.

"The actual status of the territory acquired by lease from China to European powers has not been determined. By the treaties of the United States with China, United States consuls have certain rights over and above those ordinarily exercised in European countries. In the strictly Chinese portions of the Empire these rights still exist. The existence of these powers, or of any right to exercise consular jurisdiction of any kind within the portions of China, leased to various European states, depends upon the effect of the lease of territory by one state to another. This must be decided by reference to fundamental principles and by the terms of the contract."

#### **AMICABLE SETTLEMENT OF DISPUTES; MEASURES SHORT OF WAR.**

80. Are treaties a part of international law?

No, but they generally show the tendency of the coming changes in that law. As soon as the change is accomplished there is no longer need of treaty stipulations. As contracts between nations, treaties are subject to a certain extent to the rules of international law.

**81. What is the difference between a treaty and a convention?**

"International agreements are sometimes rather arbitrarily divided into two classes—treaties and conventions. Treaties, as a rule, are agreements of a general nature bearing on political or commercial subjects, while the term convention is used for those of minor importance or relating to specific subjects. Such are consular conventions, postal conventions, etc." (Snow.)

**82. When does a treaty become binding?**

Not until it is ratified by the proper authorities of each state.

**83. When does a treaty become operative?**

Unless otherwise specified, from and at the date of its signature, and not from the date of its ratification.

**84. When do treaties cease to be obligatory and on what grounds may they be abrogated?**

1. Completion of the obligations therein provided for.
2. Expiration of the period for which the treaty has been concluded, unless a renewal has been made.
3. By mutual consent.
4. By the withdrawal of either party when the treaty itself provides for its termination in this manner.
5. By the entire attainment of the particular object for which the treaty was made.
6. When the fulfilment of the treaty becomes morally or physically impossible.
7. By loss of independence on the part of one of the contracting states.
8. By change of regime or government when the treaty expressly states that it depends upon such regime or government.
9. By the necessities of self-preservation.
10. By a declaration of war, which suspends, when it does not destroy, treaty obligations between two states.

**85.** What treaties are not altered, abrogated or suspended by hostilities between the contracting parties?

Those treaties, or parts of treaties, which relate to maritime and land warfare.

**86.** What treaties are suspended during hostilities only, and revive at the termination of war?

Those which concern frontier boundaries, the occupation of property, public debts, etc., which are permanent in their character.

**87.** How may disputes between states be amicably settled?

By arbitration or mediation. Arbitration is being resorted to more and more to settle international disputes. It must be voluntary and not obligatory.

Arbitration is a mode of settling disputes through third or disinterested parties who act as an independent and quasi judicial body, hearing both parties, and the testimony of each, and, after arriving at a conclusion, submits the same, or in case of failure to arrive at a definite conclusion, they can submit equitable propositions to the parties for the settlement of the dispute.

Mediation is essentially different from arbitration, as its office is that of reconciliation and moderation, rather than of judgment and legal settlement.

**88.** May the arbitral decision or award be disregarded or rejected?

Yes, in the following cases:

- (a) When the tribunal has clearly exceeded its powers.
- (b) When it is guilty of an open denial of justice.
- (c) When the award has been obtained through fraud or corruption.
- (d) When the terms of the award are contrary to international law.

**89.\*** What measures short of war can be taken to obtain redress of injuries?

Retorsion.

Reprisal.

Embargo.

Pacific blockade.

Embargo, civil and hostile, and pacific blockade, are special forms of reprisal.

**90.\* What is retorsion?**

Retorsion is retaliation in kind. If a nation has failed in courtesy, friendship, or good offices, if it has placed discriminating duties or restrictions upon commercial or other intercourse, or if it has in any way given just reasons for offense, and no redress is offered or given, then the injured state has the right to take a similar course on its own part to bring back the other state to a sense of propriety and justice.

**91.\* What is meant by reprisal?**

Formerly when an individual suffered injuries from a foreign state he was frequently given a letter of reprisal against the state. Such reprisals are no longer used, although permitted by laws still on the statute books.

The following acts of reprisal without any declaration or existence of war may be regarded as having the sanction of usage and sufficient authority:

1. The sequestration or seizure of property belonging to the offending state.
2. The sequestration or seizure of property of citizens or subjects of the offending state.
3. The partial or complete suspension of commercial and other intercourse between the two states.
4. Suspension or annulment of treaties in part or in whole.
5. Withdrawal of all rights and privileges to domiciled citizens of the offending state.
6. Pacific blockade.

A hostile embargo is practically under the 2nd head, being a seizure of vessels of the foreign state in the ports of the wronged

state awaiting further events. A civil embargo, by which is meant the act of a state detaining the ships of its own citizens in port, may be considered to come under the 3rd head.

**92. What are some of the reasons given for reprisals?**

A refusal to pay debts formally acknowledged; a suspension, without reason, of a treaty obligation; refusal of reparation for injury or a denial of evident justice; a refusal to pay a just indemnity for losses caused by the fault of the offending state, when its responsibility is plain; a seizure of persons or property of the wronged state; and cruel and unjust treatment of citizens domiciled in a foreign state.

**93.\* What is a pacific blockade?**

The establishment of a blockade without bringing about the change of relations between the states involved and third states, necessarily due to war. War, of necessity, brings with it new rights to the belligerents and new obligations to the neutral.

The first instance of pacific blockade occurred in 1827, when the coasts of Greece were blockaded by the English, French, and Russian squadrons, Greece being then nominally subject to Turkey, and the powers were professedly at peace with Turkey. Prior to that time, blockade was held to be a pure war right. Since that time the practice is a growing one, and seems fairly well established in spite of much opposition, due to the extent to which the rights of third states have been affected.

**94. What has been the practice in pacific blockades as to the capture and condemnation of vessels of third powers?**

In many of the earlier so-called pacific blockades, the practice was to make no distinction as to vessels of third powers. There was nothing in international law, or the practice of nations, to justify this, and much objection was made to that view by the third nations concerned. In many of the later instances, vessels of the blockaded state only were liable to seizure.



**95.** Under what conditions is a pacific blockade generally considered permissible?

In 1887 the Institute de Droit International adopted a declaration as to pacific blockades, which stated that the establishment of a blockade, without a state of war, ought to be considered permissible by the laws of nations only under the following conditions: (1) Vessels of foreign flags can enter freely notwithstanding the blockade. (2) The pacific blockade must be formally declared and notified, and maintained by sufficient force. (3) Vessels of the blockaded nation, which do not respect such a blockade, can be sequestered. The blockade having ceased, they must be restored to their owners, with their cargoes, but without compensation.

It is evident that the right to maintain a blockade in time of peace, and to extend its operations to the vessels of a third state, is not as yet recognized by international law. Such a blockade can only be operative against a third state by its expressed consent, and it does not seem reasonable to hold that such consent can be implied from an omission on the part of the third state to formally protest, in each and every case, before direct injury to its interests has occurred or been threatened.

**96.** The Greek population of Crete is in a state of insurrection against the Turkish Government, and the insurgents are being actively assisted by the Government of Greece. The six great powers of Europe have resolved upon a concerted action in order to prevent, if possible, the conditions in the island of Crete from bringing on a general war. They have agreed to enforce a blockade of the island to prevent supplies of all kinds from being sent to the insurgents. A notification to this effect has been received by the Government of the United States, which has neither recognized nor given official notice of this blockade.

An American steamer, the Kensington, lying in the Pireus, has been chartered by Greek merchants, loaded with provisions for the insurgents, and has sailed for Khania, where the United States naval force of 4 protected cruisers is anchored, together with 12 battleships and 10 cruisers representing all of the six powers.

Upon nearing the harbor, the Kensington is boarded by an officer representing the commander-in-chief of the forces of the six powers, and warned that he will not be permitted to land his cargo anywhere on the island.

I. The commander of the Kensington visits the flagship of the United States squadron and asks what her international rights are, and requests advice. What are her rights and what advice should be given?

II. On the day following the arrival of the Kensington at Khania, her commanding officer weighs anchor, steams to Retimo, which is in possession of the insurgents, and in attempting to land the cargo at a point on the coast near Retimo is first fired upon by the ships representing the six powers and is afterwards taken possession of. Six hours after this occurrence information reaches the United States admiral that the Kensington, in attempting to land her cargo near Retimo, was fired upon by ships of the six powers, her captain and two seamen killed by the fire, six of the crew wounded, and that the ship had been captured by the ships representing the six powers, and was then steaming towards Khania, convoyed by six protected cruisers—one Italian, one German, two English, one French, and one Russian.

Under these circumstances, what are the duties of the United States admiral? (Situation 1, 1897, U. S. N. W. C.)

“I. Not having been notified of the blockade of Crete by his own Government, the United States admiral should advise the master of the Kensington that, while as a pure question of international law he had the right to unmolested entry into any port of the island, yet, having in view the dominating influence which the six powers have always exercised, without question on the part of the United States, in the affairs of the Levantine nations, more especially in those of Greece and Turkey, and the fact that the blockade, practically directed against Greece, is maintained by the six powers acting in concert, it would be unadvisable for him to assert this right by attempting to force the blockade. His better course would be to protest to the officer commanding the blockading forces against the interference with his voyage; to inform that

officer that he will report the case to the United States Government, and ask that steps be taken to procure suitable reparation for the damages to himself and his owners resulting from this illegal interruption of the Kensington's voyage, and finally to demand that the fact that he protests, together with the fact that he was warned off, be entered on the Kensington's log over the signature of some responsible officer of the blockading forces.

II. Being satisfied of the facts, the duty of the United States admiral is to demand from the commanding officer of the blockading forces the immediate restoration of the Kensington, informing him that the facts of the case will be reported to the United States Government for such action as it may deem proper with reference to the loss of life and other damages which have resulted from his action in firing upon and seizing the vessel.

Up to this point the staff of the college, believing that the Kensington was clearly within her legal rights in attempting to force the blockade, is practically unanimous, but as to what should be the subsequent action of the United States admiral they are not agreed.

Others, while admitting that the capture of the Kensington was an undoubted infringement of the rights of an American vessel, and that her recapture by force would be justifiable and, under certain conditions obligatory, believe that in the case under consideration an attempt to take the vessel would fail, would aggravate the situation, might lead to war, and would be inexpedient.

The six powers are responsible, civilized governments. Their position, that of France excepted, with reference to pacific blockades and the rights of the vessels of non-interested states thereunder is sufficiently indicated by the instructions to the British admiral for the conduct of the blockade of Greece in 1886. The position of Great Britain is further shown in the stand taken by that nation in reference to the French blockade of Formosa in 1884, and by Lord Palmerston's dictum regarding the blockade of the Plata, 1845-1848.

The United States admiral is therefore justified in assuming that proper reparation can be secured through the ordinary channels of diplomacy. This being granted, an attempt on his part

to recapture the vessel would be taking, unnecessarily, a very serious responsibility. His action should not go beyond the demand for the restoration of the vessel, coupled with the intimation that the U. S. would exact full indemnity for the loss of life and damage to property."

97. Several powers, not including the United States, have united in proclaiming a pacific blockade of minor state K. A merchant vessel of the United States bound for a port of K approaches this port and is warned by a vessel representative of the blockading powers not to enter under penalty of violation of blockade. The captain of the merchant vessel appeals to the commander of a United States vessel of war to convoy him through, or in some other manner secure for his vessel entrance to the port.

What action should the commander take, and why?

(Situation 7, 1902, U. S. N. W. C.)

"The commander of the United States vessel of war should request of the commander of the forces maintaining the pacific blockade that the merchant vessel of the United States enter port K. If this is not permitted, he should inform the commander of the forces maintaining the pacific blockade that the United States does not acknowledge the right in time of peace to thus interrupt commerce of powers not concerned in the blockade, and he should give formal notice that the United States would hold the blockading states responsible."

While, theoretically, blockade of any kind is strictly a measure of war, there have been a number of so-called Pacific Blockades instituted, and the general tendency is to favor its exercise as a means of coercion short of war. Pacific blockade is generally considered permissible by the laws of nations only under the conditions, as laid down by the Institute of International Law, in 1887, for which see, question 95, pages 39 and 40 of these notes.

#### **MOVEMENTS FOR THE MITIGATION OF THE EVILS OF WAR.**

98. Describe in a general way the modern acts and movements tending to ameliorate the evils of war.

Among the first and most remarkable were the "Instructions for the government of the armies of the United States in the field," drawn up by Francis Lieber, LL. D., and issued as General Order, No. 100, April 24, 1863. (See appendix, Glenn.) They are accepted by text writers as having standard and permanent value and as expressing with great accuracy the usage and practice of nations.

Other movements have been the Geneva conventions, the declarations of St. Petersburg and Brussels, and the official manuals adopted by France, Russia, and Holland.

In 1880, the Institute de Droit International adopted a code of "Laws of war on land," based on all of the above, but as it has not been adopted generally by the powers, it may only be considered as a movement and not as an authoritative act.

The Geneva convention for the amelioration of the condition of the sick and wounded of armies in the field has been generally agreed to by the civilized powers, and was acceded to by the United States in 1882.

The additional articles which cover cases of maritime warfare, while they are accepted in principle, failed to secure ratification and remain without binding force.

**99.\*** What was the result of the Geneva Conference of 1864?

The articles referring to warfare on land have been acceded to generally by the principal nations of the world, but those referring to maritime warfare failed to secure ratification.

The articles ratified, provide that ambulances, military hospitals, and the persons employed in them, comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains, shall be considered neutral; inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free; any wounded man entertained or taken care of in a house shall be considered a protection thereto; any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops, as well as part of the contributions of war which may be imposed; wounded or sick soldiers shall be taken care of, to whatever nation they may

belong; evacuations, together with the persons under whose direction they take place, shall be protected by an absolute neutrality. A distinctive and uniform flag, and also an arm badge, were adopted. The flag and arm badge bear a red cross on a white ground. The flag must be accompanied by the national flag.

**100.\*** What principles were established by the Declaration of Paris in 1856?

This Declaration was agreed to by all the maritime powers except the United States, Spain, and Mexico, and is binding only between those powers who acceded to it.

It provides as follows:

1. Privateering is, and remains abolished.
2. The neutral flag covers enemy's goods, with the exception of contraband of war.
3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.
4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

## **PART II**

# **INTERNATIONAL LAW AS MODIFIED BY WAR**

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### **WAR; GENERAL CHARACTER; MARITIME WAR.**

**101.** What effect does war have on the relations of states?

War changes the relations of all states. It brings new rights to the belligerents and new obligations to the neutrals.

**102.** What is war?

A hostile conflict with arms between two or more states or communities claiming sovereign rights. It is the recognized means of carrying out and enforcing the demands of a state, when they can not be obtained by peaceable or amicable means.

**103.** How are wars classified?

According to international law, as, public or mixed, and again as perfect or imperfect.

Public war:—is a contest by force between independent sovereign states.

Mixed war:—is a war between members of the same political society. It is a civil war, though it may not reach beyond the proportions of an insurrection or a local rebellion.

Perfect war:—is one in which, under all circumstances permissible by the laws of war, one state and all its members are at war with another state and all its members.

Imperfect war:—is one which is limited either as to persons or as to place or objective.

In a military sense, wars are often classed as offensive or defensive.

In a historical or political sense, they are classified as wars of intervention, of insurrection or revolution, of independence, of conquest, of opinion, religious wars, national wars, civil wars, etc.

**104.** As between two independent states is a formal declaration of war preceding hostilities necessary?

It is not necessary, and not even customary in modern times, but it is now generally agreed that a manifesto or declaration within the territory of the state declaring the war is necessary in order to warn at least the citizens of the state and neutrals.

The proclamations issued by the United States and by Spain in the recent war were, as follows:

#### **WAR RULES LAID DOWN BY THE UNITED STATES.**

##### **A PROCLAMATION.**

Whereas, By an act of Congress, approved April 25, it is declared that war exists and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain; and

Whereas, It being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice, it has already been announced that the policy of this government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris.

Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws do hereby declare and proclaim:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.
2. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.
3. Blockades in order to be binding must be effective.
4. Spanish merchant vessels in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places, and such Spanish merchant vessels, if met at sea by any United



States ships, shall be permitted to continue their voyage, if on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; provided, that nothing herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited, or contraband of war, or any despatch of or to the Spanish government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port, bound for any port or place in the United States, shall be permitted to enter such port and to discharge her cargo, and afterwards forthwith to depart without molestation; and any such vessels, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, I have hereto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, on the twenty-sixth day of April, in the year of our Lord, one thousand eight hundred and ninety eight, and of the independence of the United States the one hundred and twenty-second.

WILLIAM MCKINLEY.

By the President,

JOHN SHERMAN, Secretary of State.

#### SPAIN'S DECREE.

Diplomatic relations are broken off between Spain and the United States, and, in the state of war now being begun between the two countries, numerous questions of international law arise, which must be precisely defined, chiefly because the injustice and provocation come from our adversaries, and it is they, who, by their detestable conduct, have caused this grave conflict.

We have observed with the strictest fidelity the principles of

international law and have shown the most scrupulous respect for morality and the right of government. There is an opinion that the fact that we have not adhered to the Declaration of Paris does not exempt us from the duty of respecting the principles therein enunciated. The principle Spain unquestionably refused to admit then was the abolition of privateering. The government now considers it most indispensable to make absolute reserve on this point, in order to maintain our liberty of action and uncontested right to have recourse to privateering when we consider it expedient, first by organizing immediately a force of cruisers, auxiliary to the navy, which will be composed of vessels of our mercantile marine and with equal distinction in the work of our navy.

Clause 1. The state of war existing between Spain and the United States annuls the treaty of peace and comity of October 27, 1795, and the protocol of January 12, 1877, and all other agreements, treaties, or conventions in force between the two countries.

Clause 2. From the publication of these presents thirty days are allowed to all ships of the United States anchored in our harbors to take their departure free of hindrance.

Clause 3. Notwithstanding that Spain has not adhered to the Declaration of Paris, the government, respecting the principles of the law of nations, proposes to observe, and hereby orders to be observed, the following regulations of maritime law:

1. Neutral flags cover the enemy's merchandise, except contraband of war.

2. Neutral merchandise, except contraband of war, is not seizable under the enemy's flag.

3. A blockade to be obligatory must be effective, viz., it must be maintained with sufficient force to prevent access to the enemy's littoral.

4. The Spanish government, upholding its right to grant letters of marque, will at present confine itself to organizing, with the vessels of the mercantile marine, a force of auxiliary cruisers which will co-operate with the navy, according to the needs of the campaign, and will be under naval control.

5. In order to capture the enemy's ships and confiscate the enemy's merchandise and contraband of war under whatever form, the auxiliary cruisers will exercise the right of search on the high seas, and in the waters under the enemy's jurisdiction, in accordance with international law and the regulations which will be published.

6. Defines contraband, naming weapons, ammunition, engines, and "in general all the appliances used in war."

7. To be regarded and judged as pirates, with all the rigor of the law, are captains, masters, officers, and crews of vessels, two-thirds of whom not being American, shall commit acts of war against Spain, even if provided with letters of marque issued by the United States.

**105. When does a war date from?**

In a war between two independent states, the war dates from the first act of hostilities when there is no declaration and also when there is a subsequent declaration.

In civil wars there never is any declaration, and the war dates from the recognition of belligerency of the insurgents, either by a third power or by some act of war on the part of the legal government, such as a declaration of a blockade, the exchange of prisoners, etc.

**106. What are some of the differences between maritime wars and those on land?**

In maritime wars there is an absence of that large class of non-combatants with whom armies come in contact on land; neutrals are interested to an important degree, and they have been able to make their influence felt in restraining the excesses of belligerents; and the seizure of property is regulated by prize courts composed of men of judicial training, and not subject to the excitement surrounding warfare.

**107.\* What is the difference between property of the enemy afloat and ashore at the breaking out of hostilities?**

Property of the enemy afloat is *prima facie* subject to capture, while that ashore is not *prima facie* subject to capture. This difference is more apparent than real, however, and is on account of the greater number of varieties of property on shore. Merchandise, whether embarked upon the sea or found on land, in which the hostile power has some interest for purposes of war, is *prima facie* a subject of capture. Vessels and their cargoes are usually of that character. Of the infinite varieties of property on shore, some are of this character and some are not. There are very serious objections of a moral and economical nature to subjecting all property on land to military seizure. These objections have been thought sufficient to reverse the *prima facie* right of capture. To merchandise at sea the *prima facie* right of capture remains.

There have been movements in modern times tending towards confining the operations of war to weakening the military forces of the enemy (See declaration of St. Petersburg), and to exempting private property, except contraband, etc., from capture both on land and at sea.

England, as the great sea power, has constantly refused to discuss any proposition having for its end the abolition of the right of capture of private property at sea.

During the Franco-Prussian war the German armies in France took, by way of requisitions and contributions, property valued at more than 600,000,000 francs, not counting the unavoidable damage caused by the march of the armies.

As to the policy of taking private property, Von Moltke wrote, "The greatest benefit in the case of war is that it shall be terminated promptly. In view of the end it should be permitted to use all means save those which are positively condemnable. I am by no means in accord with the declaration of St. Petersburg, when it declares that the weakening of the military forces of the enemy constitutes the sole legitimate procedure in a war. No, it is necessary to attack the resources of the government of the enemy, his finances, his railways, his provisions (stores), and even his prestige."

From the present outlook on the Continent of Europe it seems probable that no sentiments of humanity will stand in the way of

striking hard at every resource of the enemy, and instead of further exemption of private property at sea from capture, it would seem that the greatest preparations are being made for the destruction of the enemy's commerce. Not only commerce destroying, but it is probable that contributions and exactions from rich seaport towns will be resorted to in the next maritime war.

**108.** What is the general rule as to public property owned by the enemy?

That movable property can be appropriated, and that immovable property, such as lands and buildings, is not to be confiscated or alienated. The true reason for this exemption seems to be that it is impossible for the belligerent state making the seizure to give a good title to the purchaser. The profits accruing to the state owning the property may be seized by the occupant, and the latter may make use of the property for quartering troops or other purposes, and may collect and appropriate the rents, lease or make other contracts in regard to the same, which will be good during the occupation, but not afterwards.

**109.** What is the general rule as to private property on land owned by the citizens of the enemy?

Immovable property is exempt for the same reasons as immovable public property.

Movable private property is still subject to seizure under regulations governing contributions and requisitions.

**110.** What are contributions and requisitions?

Contributions:—consist in moneys levied by the invader as a substitute for pillage. They should assure the preservation of every kind of property except that they do not free the inhabitants from the "requisitions" of the enemy.

Requisitions:—consist in the enforced render of articles needed by the enemy for consumption or temporary use. They consist of food, clothes, forage, wagons, horses, lodging, labor, railroad material, boats, and other means of transportation, all of which are levied under what is recognized as military necessity.

Receipts are usually given, and serve the double purpose of advising a subsequent army of the amount that has been previously taken, and to facilitate compensation to the owners in case policy dictates such a course. This, however, is not incumbent on the state. Some authorities state that articles can be requisitioned only by compensation of the individual owners, but the safer statement seems to be that this compensation is to be arranged for in the terms of peace. G. O. No. 100, U. S. War Dept., of April 24, 1863; provides that when private property is taken by way of military necessity that "If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity."

111. What is the general rule as to property vested in the enemy which is set aside for the maintenance of hospitals, churches, educational institutions, etc.?

As a rule they are not seized, nor are the rents or profits appropriated. The instructions of the United States, see G. O. No. 100, state:

"34. As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character—such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it."

"35. Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded."

"36. If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace."

"In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured."

112. What is the practice of the United States in regard to private property on land in invaded territory?

G. O. No. 100, states as follows:

"37. The United States acknowledge and protect, in hostile countries occupied by them, . . . strictly private property; . . .

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, land, boats or ships, and churches, for temporary and military uses."

"38. Private property, unless forfeited by crimes or by offences of the owner, can be seized only by way of military necessity, for the support or other benefit of the army of the United States."

113. What is the rule as to private property of citizens of either belligerent, found in the territory of the other, on land?

It is strictly confiscable, but modern usage has rendered this rule practically obsolete.

114. What has been the policy of the United States as to private property of the citizens of the enemy at sea?

In 1856, the United States declined to accede to the Declaration of Paris unless private property at sea was exempted from capture. The U. S. has favored the exemption of merchant vessels and their cargoes from capture.

115. What is the rule as to property of the enemy found within the territorial waters upon the outbreak of the war?

It is strictly confiscable, but the usual rule is to allow a certain time in which vessels then in port belonging to the enemy may unload and load their cargoes and depart. It is also usual to permit enemy's ships which had sailed for these ports prior to the

outbreak of war to enter such ports, to discharge their cargoes and to depart forthwith without molestation.

Both the United States and Spain allowed vessels in port thirty days.

**116.** Are fishing vessels engaged in coast fishing exempt from capture?

Yes, by general custom, but this practice is not so general as to have become a rule of international law. The rule seems to be that so long as they remain innocuous they are unmolested, and the reason is that this occupation is the sole means of living for a very large portion of the inhabitants of certain countries. This exemption is not extended to those engaged in deep sea fishing.

**117.** Are vessels engaged in exploration and scientific discovery exempt from capture?

They are usually granted immunity by mutual consent, on the ground that their labors are intended for the benefit of all mankind. One of the earliest and most noted examples of this was when the French government, in 1776, ordered all vessels to treat Captain Cook as a neutral and friend.

### **PRIVATEERS.**

**118.** What is the status of privateers?

By the Declaration of Paris, the signatory powers agreed that privateering is and remains abolished. This declaration has been acceded to by all maritime powers except the United States, Spain, and Mexico. The declaration is not binding except between those powers who have acceded to it.

The United States maintains the right to resort to privateering, it being only a question of policy which would prevent its exercise. In the war with Spain it was announced that "the policy of this government will be not to resort to privateering, but to adhere to the rules of the Declaration of Paris."

In the same war, Spain made absolute reserve on this point, in



order to maintain its liberty of action and uncontested right to have recourse to privateering when considered expedient.

The conditions of modern naval warfare have lessened to a very great degree the desirability of privateering from the standpoint both of the privateer and the national government.

**119.** Are captures by a private vessel not commissioned in any way authorized by the laws of war?

It seems to be well agreed that an ordinary uncommissioned merchantman belonging to a belligerent state has, of course, a right to resist capture, and therefore seize in self-defense, but ought not in general to attack. It may reasonably be expected in coming naval wars that steamers of the great mail lines will be armed so as to defend themselves from attack, and the defense could be legitimately carried to the point of a seizure of the attacking vessel, or a recapture if once taken.

#### **EFFECT OF WAR AS BETWEEN ENEMIES.**

**120.** When one nation is at war with another, who are enemies?

All the citizens or subjects of the one are deemed in hostility to the citizens or subjects of the other. Another doctrine has been accepted by the majority of the continental writers, but is not accepted by the other nations of the world, viz., that between two or more belligerent nations, the private persons of whom those nations are composed are enemies only by accident; they are not so as men; they are not even so as citizens; they are so only as soldiers. The United States has declared adherence to first doctrine in G. O. No. 100.

**121.** What is the rule in the case of citizens of one belligerent state who are within the territory of the other belligerent at the breaking out of war?

There have been three rules in operation since the 16th century:

(1) A right to detain such persons as prisoners. This has now become obsolete.

(2) To permit these persons to withdraw within a reasonable

period; this is still in force by treaty and otherwise, but has been largely superseded by—

(3) Which is to permit them to remain unmolested so long as they conduct themselves peaceably or during good behavior. This last rule is growing in usage and is embodied in many treaties, and will probably become the sole rule. Of course a belligerent will always retain the right to expel such alien enemies as, in his opinion, are dangerous to the state.

When such persons are allowed to remain in the country they are exonerated from the disabilities of enemies, and they are placed in the same position as other foreigners in the country.

**122.** Into what general classes are the citizens of belligerent states divided according to the rules of war?

Combatants and noncombatants.

**123.** Who are lawful combatants and may consequently legally commit acts of hostility?

The regularly organized naval and military forces of the nation and others called out in its defence and authorized by the government to bear arms against the enemy, and those spontaneously defending themselves in case of urgent necessity, without any express authority for that purpose.

At the congress of Brussels, in 1874, the great military powers of Europe were, for the most part, in favor of limiting the rights of combatants to the members of the regularly organized armies, thus making it illegal even for a people to rise en masse to repel an invader. The smaller states generally and England opposed this view.

**124.** Who are noncombatants?

Those inhabitants not bearing arms but engaged in peaceful pursuits. In their persons they are by modern usage exempt from hostile attack. They are, however, exposed to all the personal injuries which may result indirectly from military or naval operations.

**125. Who may become prisoners of war?**

**Lawful combatants.**

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government.

Citizens who accompany an army, such as sutlers, newspaper correspondents, contractors, etc.

Chaplains, officers of the medical staff, apothecaries, hospital nurses and servants, etc., are not liable to detention as prisoners of war, unless the commander has reason to detain them.

Officers and seamen of merchant vessels of the enemy may, according to usage, be detained as prisoners of war on the ground that they can be immediately employed on ships of war.

**126. What is the status of ambulances, military hospitals, surgeons, nurses, etc.?**

The Geneva convention of 1864, to which nearly all nations have acceded, makes them neutral.

**127. What weapons or implements may be lawfully used in war?**

With certain exceptions, such as the use of poison, poisoned weapons, of explosive bullets, or of weapons that will cause unnecessary suffering, any instrument of destruction, open or concealed, may legitimately be used against an enemy.

The conference at Brussels, in 1874, adopted the following as a portion of a proposed code of the laws of war. Although not authoritatively, it agrees with the best and most enlightened sentiment of the present time. By it are forbidden:

- (a) The use of poison or poisoned weapons.
- (b) Murder by treachery of the individuals belonging to the hostile nation or army.
- (c) Murder of an antagonist who having laid down his arms or having no longer the means of defending himself has surrendered at discretion.
- (d) The declaration that no quarter will be given.

(e) The use of arms, projectiles, or substances which may cause unnecessary suffering, as well as of projectiles forbidden by the Declaration of St. Petersburg, in 1868.

### **ATTACK AND SIEGE OF FORTIFIED PLACES.**

**128.** What are the usages as to attack and siege of fortified places?

Usually there is a distinction made between garrisoned forts and fortified towns. Any means of assailing a fort may be used that are likely to be successful, but many generals abstain from bombarding a garrisoned town, and resort to storming in order to save the inhabitants; or if the nature of the place or other causes renders bombardment necessary, they give notice to the inhabitants, that they may retire to a place of safety.

Cutting off food and water supply of a besieged place to hasten its surrender is a legitimate means of warfare. Fortified places can be taken by an open assault or by regular siege. The fact of a place being fortified is evidence that it is liable to attack in case of war and the noncombatants residing within its limits must be prepared for a contingency of that kind.

During the Franco-German war in twenty-two sieges made by the Germans not a single assault was attempted. It was easier, more effective, and claimed more humane to invest the place, seal all approaches, to prevent the supply of provisions or reinforcements, and then by long-range siege guns keep up a constant fire beyond the range of the guns of the besieged. This fire was not concentrated upon the fortifications, but was directed upon the town and caused such havoc that the place was forced to surrender through famine and excessive suffering. There were cases like that of Peronne, where the town was partially destroyed while the ramparts were nearly intact. There seems to be good reason for belief that more lives were saved by this means of attack than by an ordinary siege and assault.

Firing upon Paris by the Germans was begun without previous notification, and upon protest being made in January, 1871; by the diplomatic representatives in Paris, Bismarck responded to the effect that such notification was not required by the laws of

war, that the bombardment was dictated by military necessity, and that the neutrals were notified in September and October of 1870, of the dangers, and given permission then to pass through the German lines.

It has been the usage to give notice of bombardments, but it is probable, notwithstanding the existing and proposed manuals of the rules of war, that the examples of the Germans will be followed in the future.

**129.\*** Is any previous notice of a belligerent's intention to bombard a town necessary or customary?

It is customary to give such notice. See preceding answer as to action of the Germans in Franco-Prussian war and Bismarck's reply.

#### ATTACK OF UNFORTIFIED TOWNS AND SEAPORTS.

**130.** What is the usage as to attack of unfortified towns and seaports?

The consistent usage, as evidenced by custom and the various declarations of international conferences, the last of which was the Rules of the Hague Conference, in 1899, is that in land warfare "the attack or bombardment of towns, villages, habitations, or buildings which are not defended is prohibited." Such towns are subject, however, to requisition and contributions.

Generally at the international conferences, the proposed rules of maritime warfare have been not accepted, but all naval questions left outside the deliberations. This was done at The Hague. The conference, however, in its final act, voted:

"The conference expresses the wish that the proposal to settle the question of the bombardment of ports, towns and villages by a naval force may be referred to a subsequent conference for consideration."

There are evidences of a coming change. The tendency in modern times is growing to exact in money what was formerly destroyed or taken by way of pillage. There is now greater accumulation of treasure in places and especially in great seaport

cities. Notwithstanding all the arguments against it on the ground of humanity, especially from writers of the nation most likely to be affected, it is probable that such exactions of contributions will be enforced in maritime war as they have been in recent times in land warfare. Furthermore, it is difficult to see any great moral distinction in the two cases.

### **SPIES; DECEIT.**

**131.** Is the employment of spies allowable, and what is the punishment?

Yes, the employment of spies is allowable by the rules of war; but the punishment for being a spy is death upon capture by the enemy.

A spy is a person who secretly, in disguise or under false pretenses, seeks information with the intention of communicating it to the enemy. Any person in his proper uniform, worn so that it is recognizable, who penetrates within the enemy's lines with the intention of collecting information is not considered as a spy, and if captured becomes a prisoner of war.

If a spy regains his own lines, and is afterwards captured as a belligerent, he cannot be punished for an offense as a spy previous to such return.

The position of a spy is peculiar in that the duty is not compulsory, and, if undertaken by an individual of the army or navy, it is with a full understanding of the consequences if caught.

**132.** To what extent are deceptions and stratagems permissible in war?

While a belligerent is bound to hold sacred all promises to an enemy and keep all engagements, express or implied, an advantage may be taken by stratagem or surprise without perfidy. The circulation of any intelligence calculated to deceive the enemy is allowable. A vessel may hoist false colors to decoy an enemy within range of her guns, but to make signals of distress for such a purpose would be an act of great perfidy and not allowable. Information cannot be obtained by using a flag of truce; nor can

a building be properly protected by marking it with a hospital flag, unless it be in reality used as such; nor can persons not covered by the provisions of the Geneva Convention make use of the prescribed cross for protection. On land it is not permitted to use the enemy's flag or uniform for purposes of deceit. If for reasons of necessity the enemy's uniform, acquired by capture, is worn it should have some distinguishing mark sufficiently prominent to attract attention at a distance.

**133.\*** May a hostile shot be fired under false colors?

No. The U. S. Naval Regulations, 1900, state:

Article 293. "Under no circumstances shall he commence an action or fight a battle without the display of the national ensign."

### FLAGS OF TRUCE.

**134.** Who alone is authorized to send or admit communication by flag of truce in operations afloat?

The senior officer only; a vessel in position to observe such a flag should communicate the fact promptly. The firing of a gun by the senior officer's vessel is generally understood as a warning not to approach nearer. The flag of truce should be met at a suitable distance by a boat or vessel in charge of a commissioned officer having a white flag displayed from the time of leaving until her return. In despatching a flag of truce the same precautions should be observed.

**135.** To what immunity is the bearer of a flag of truce entitled?

To complete inviolability of person, and this also applies to a drummer, bugler, color bearer, guide, or interpreter, if any accompany him. If the bearer of a flag of truce abuse his trust he may be detained, and if he should take advantage of his mission to abet a treasonable action he forfeits his character of inviolability.

**136.** Is it obligatory to receive a flag of truce?

Not under all circumstances. If received, such measures of precaution may be taken as will prevent injury being done by the

presence of an enemy within the lines. This may be done by blind-folding the bearer, detaining him at an outpost, or in any other manner which may seem necessary.

**137.** Is it obligatory to cease firing on the appearance of a flag of truce?

If a flag of truce appears during the progress of an engagement, a belligerent is not obliged immediately to stop his fire, the continuance of which may be of critical importance to him, and he cannot be held responsible if the bearers are then accidentally killed. If, however, it is made clear that the white flag is exhibited as a token of submission, firing is to cease.

#### **QUARTER; RETALIATION.**

**138.** Is it ever allowable to give no quarter?

Quarter should only be refused in case of some conduct on the part of the enemy in gross violation of the laws of war, or to an enemy who has given no quarter; another possible exception to the rule that quarter cannot be refused is when, from special circumstances, it is not possible for an armed force to be encumbered with prisoners without danger to itself. Such cases might occur at sea and in campaigns resembling those of the Indian Mutiny, when small bodies of troops remained for a long time isolated in the midst of enemies.

G. O., No. 100, Instructions for Government of Armies of the United States in the field, provides:

“60. It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it *impossible* to cumber himself with prisoners.”

“62. All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.”

“63. Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.”



"66. Quarter having been given to an enemy by American troops under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death, if, within three days after the battle it be discovered that he belongs to a corps which gives no quarter."

**139.** What is retaliation and when may it be resorted to?

Retaliation is the right of compelling an enemy to observe the rules of war or to prevent him from violating any particular rule. It should not be resorted to until an opportunity is afforded the enemy for explanation or redress. If possible, the retaliation should be in kind unless the action of the enemy is in gross violation of the dictates of humanity and of civilized warfare.

### **CAPITULATIONS AND CARTELS.**

**140.** What is a capitulation and how far does a commander's authority extend in this respect?

A capitulation is an agreement entered into by a commanding officer for the surrender of a military or naval force, or for the surrender of a town, fortress, or particular district under his command. Without special authority, it is limited to the officer's command.

**141.\*** What is a cartel?

A cartel is generally understood to be an agreement between belligerents for the exchange or ransom of prisoners of war.

Hall extends the definition to include agreements as to direct intercourse, for treatment of prisoners, method of reception of flags of truce, and similar subjects.

A cartel can be made between commanders-in-chief or by the government.

**142.\*** What is a cartel ship?

A vessel employed in the exchange of prisoners, or to carry proposals from one belligerent to another under a flag of truce. She

is considered a neutral vessel, and so far as her service is concerned is under the protection of both belligerents. She can carry neither cargo nor passengers for hire, nor any ammunition or implements of war, except a gun for firing signals. The authority to employ a cartel ship emanates from the state, but it may be issued by a subordinate officer in the execution of a public duty.

### **TREATMENT AND EXCHANGE OF PRISONERS OF WAR.**

#### **143. To what treatment are prisoners of war entitled?**

Prisoners of war are prisoners of the captors' government. They are not criminals and they must be treated with humanity. They may be subjected to such regulations, and their confinement may be as rigorous as their safe-keeping demands. The confinement is to be only as a measure of safety. They are entitled to all articles in their personal possession as private property with the exception of arms.

They must give their true names and grades. The captors are obliged to support them, and it is considered, unless otherwise agreed, that they should be treated, so far as food and clothing are concerned, upon the same basis as troops upon a peace footing.

They may not be compelled to take any part in operations of war or to give information concerning their army or country. They may be employed upon public works other than those of a military nature, provided such labor is not detrimental to health, nor humiliating to their military or naval rank, or, if civilians, to their social or official positions. In recent times no labor has been required from prisoners of war except what may be necessary for their sanitary protection, etc.

If allowed to engage in private industry their pay for such services may be collected by the authorities in charge of them. The sums so received may be used for bettering their condition or may be paid to them on their release, subject to deduction, if deemed expedient, of the expense of their maintenance.

#### **144. Is it an offense for a prisoner of war to attempt to escape?**

No, but he may after a summons be fired upon. If recaptured before being able to rejoin his own army he is subject only to dis-

ciplinary penalties or a more rigorous confinement. If he succeeds in escaping and is subsequently made a prisoner he incurs no penalty for his previous escape. If he has given his parole, however, he may be deprived of his rights as a prisoner of war.

**145. What is ransom, as applied to prisoners of war?**

It consists in the payment of an agreed compensation for their discharge from custody. It was common in the 17th century but is now practically obsolete, although G. O., No. 100, provides for it.

**146. Is it obligatory on a belligerent to agree to an exchange of prisoners of war?**

No. When such agreements are made they are based purely on mutual convenience.

**147. How are exchanges of prisoners of war arranged?**

They are generally arranged by cartels and are of strict equality—man for man, rank for rank, disability for disability. By arrangements values expressed in terms of private soldiers can be given to different grades of commissioned and non-commissioned officers.

**148. What is parole?**

A parole is a promise, either verbal or written, made by an individual of the enemy by which, in consideration of certain privileges or advantages, he pledges his honor to pursue or refrain from pursuing, a particular course of conduct.

Paroles are ordinarily only received from officers, and when necessary are given by officers for the enlisted men of their command. They are accepted from enlisted men only in exceptional cases.

No prisoner can be compelled to give his parole, nor can he be paroled by the act of the enemy alone.

In case the government to which the individual belongs refuses to allow or recognize parole, it is the duty of the paroled person to return to captivity. Paroles lose their binding force only upon

exchange or at the termination of the war. A breach of parole is an offense against the laws of war which may be punished with death.

When paroles are given and received, there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated.

G. O., No. 100, provides, "126. Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach."

"127. No non-commissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individual giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer."

"128. No paroling on the battle-field, no paroling of entire bodies of troops after a battle, and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value."

"130. The usual pledge given in parole is not to serve during the existing war, unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war.....; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents or to civil or diplomatic service for which the paroled officer may be employed."

### **SAFE CONDUCTS AND SAFEGURADS.**

#### **149. What are safe conducts and safeguards?**

A safe conduct:—is a pass given to an enemy subject or an enemy vessel by the military or naval commander-in-chief to pass from one point to another.

A safeguard:—is a protection granted either to persons or property within the limits of the command, and consists either in a written order or a guard of soldiers

### TRADE WITH THE ENEMY.

150. What effect does war have on trade and business relations between citizens of the two belligerents?

It makes all trade with the enemy illegal, except such as may be especially permitted by the sovereign. This includes all business communications across the hostile lines.

On April 27, 1898, during the Spanish-American war, the Treasury Department issued to collectors of customs certain instructions, which were prepared in consultation with the Department of State. These instructions forbade the clearance of an American vessel bound for a Spanish port, but the only restriction they placed upon the clearance of any other vessel for such a port was that the vessel should not carry cargo of contraband of war or of coal. Thus the clearance of a neutral ship with an American-owned cargo for a Spanish port was permitted, and to this extent trading between enemies was allowed.

151. An American citizen bought a quantity of English goods in England before the declaration of war and deposited them on a small island belonging to the English, Indian Island, near the line between Nova Scotia and the United States. Upon the breaking out of the war of 1812, he sent a vessel, the *Rapid*, from Boston to Indian Island, where the goods were taken on board. While returning to the United States, the *Rapid* was captured by the *Jefferson Privateer* on the high seas and brought into Salem.

Was the vessel properly liable to capture and condemnation?

The vessel and cargo were condemned by the Circuit Court of Massachusetts, and this decision was confirmed by the U. S. Supreme Court on the ground of trading with the enemy.

152. When a citizen of the United States is residing in the enemy's country at the outbreak of war, is he permitted to bring

his property back in such a way as to involve a trade with the enemy?

No. He is not permitted to bring his property back in such a way as to involve a trade with the enemy. See case of brig Joseph, (Snow's Leading Cases.)

**153. What is a license to trade?**

A written permission granted to subjects of either belligerent to carry on trade with a particular place or in specified articles. It is granted by the sovereign power. In the United States, by the President.

**154.\* What is a ransom bill?**

An agreement by a captured vessel to pay a certain sum in money to the captor. It is usually made in writing, in duplicate, one copy being retained by the captor, and the other in the possession of the captured vessel constitutes its safe conduct good against all cruisers of the belligerent and his ally, to pursue a certain voyage. Practically, a ransom is a repurchase of a prize by the original owners, and under it the crew are also released instead of becoming prisoners of war. The captor used to keep an officer of the prize as a hostage for payment, in addition to the ransom bill.

Some states do not permit the practice of ransom. Some do under certain restrictions. The United States does under all circumstances.

**155. If the ransomed vessel is lost by the perils of the sea before her arrival, is the obligation to pay thereby extinguished?**

No.

**156. If the captor, after having ransomed a vessel belonging to the enemy, is himself taken by the enemy, together with the ransom bill of which he is the bearer, what is the effect as to the ransomed vessel?**

The ransom bill becomes part of the capture made by the enemy, and the persons of the hostile nation who were debtors of the ransom are thereby discharged from their obligation.

### COMMERCIAL DOMICILE.

**157.** What effect does domicile of the owner have upon property rights during war?

Property liable to capture at sea takes its enemy character from the residence of its owner, rather than from his nationality. If he has domicile in a belligerent country his property found upon the sea is enemy property, although he be a citizen of a neutral country or of the other belligerent state; and on the other hand, if a citizen of a belligerent state is domiciled in a neutral country his property found on the sea is neutral property. In such a case a man is said to have a commercial domicile in the country where he resides and is engaged in commerce; but a merchant who has a house of trade in a belligerent country, though he may reside in a neutral state, is, in so far as his property with that house is concerned, a belligerent.

The French rule in this, as in many other cases, is different in a very essential respect from that of the United States and Great Britain. It is that wherever a man may have his domicile his national character impresses itself upon his property. This question of national domicile in time of war is wholly connected with property found upon the sea.

Though generally the property of a house of trade established in an enemy's country is considered liable to capture and condemnation, this rule does not apply to cases, at the outbreak of the war; of persons who have habitually carried on trade in the enemy's country, though non-resident, and who have not had time to withdraw from such trade. If, however, a person begins, or continues such a trade during the war, he cannot protect himself by his neutral residence.

**158.\*** War is declared between Mexico and the United States; a French resident of Mexico hears of it, packs up, and takes pas-

sage in a French vessel for France; you overhaul him on the high seas. How act?

Let him alone. He has shown bona fide intention of giving up his Mexican domicile. This seems to be the one exception to the rule that property hostile at the beginning cannot change its character.

### **MERCHANDISE IN TRANSIT AT SEA.**

**159.\*** What is the status of neutral goods on board an enemy's vessel?

"Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag." This is one of the rules of the Declaration of Paris, and is binding between all the signatory powers. It is also the policy of the United States, and was one of the war rules laid down by both the United States and Spain in the recent war.

**160.\*** What is the status of enemy's goods on board a neutral vessel?

"The neutral flag covers enemy's goods, with the exception of contraband of war." This is one of the rules of the Declaration of Paris, and is binding between all the signatory powers. It is also the policy of the United States, and was one of the war rules laid down by both the United States and Spain in the recent war.

**161.\*** What is the consequence if property be shipped from a neutral to an enemy's country under contract to become the property of the enemy?

It is held to be enemy's property. When a war breaks out between two maritime states having large commerce, merchants of both belligerents will naturally resort to all possible means to protect their property from capture. The most common method, perhaps, is to make it appear that their goods, while in transit on the sea, belong to neutrals. In time of peace merchants residing in different states, in shipping goods over the ocean, may make any contract they choose with respect to the risk during the transit;



they may agree that the title may remain in the name of the shipper or be in that of the consignee. The ordinary custom of merchants has always been that goods delivered to the master of a ship, are held to be delivered to the buyer or consignee. In time of war, prize courts will not permit any variation from this custom. Otherwise, the dealings between belligerents and neutrals, would be so arranged that goods in transit on the sea, would always belong to neutrals in order to avoid capture.

By the French rule, the neutral shipper may assume the risk of goods in transit to an enemy country.

The rule of the English prize courts is, that such property is to be condemned as enemy's property. If contracted to become the property of the enemy only on delivery, the capture is considered as delivery.

**162.\*** What is the rule for property "in transitu."

According to the rules of the English and American prize courts, property hostile at the time of shipment can not change its character during transit by a sale to a neutral. Property neutral or friendly at the beginning of the voyage may, however, change its character so as to become enemy's property.

In the case of an owner formally domiciled in a belligerent state, who departs with his property for his native land to remain there, there seems to be a just exception to the rule that there can be no change in the hostile character of property in transit by a change in the national character of the owner.

**163.** May merchant ships of a belligerent be transferred to a neutral during war, or even when war is imminent?

In England and the United States, the right to purchase vessels is in principal admitted, they being in themselves legitimate objects of trade as fully as any other kind of merchandise, but the opportunities of fraud being great, the circumstances attending a sale are severely scrutinized, and the transfer is not held to be good if it is subjected to any condition or even tacit understanding by which the vendor keeps an interest in the vessel or its profits, a

control over it, a power of revocation, or a right to its restoration at the conclusion of the war. (Hall.)

The sale of an enemy's vessel to a neutral purchaser, to be valid, ~~must in all cases be absolute and unconditional.~~

France in view of the difficulty of ~~detecting the fraud in such~~ transfers of ships, refuses absolutely to recognize their validity, the presumption in all cases being that the transfer is fraudulent. While in the United States and England proof will be admitted to the contrary, it will not be in France. This has been the French rule for over two hundred years.

Any doubt is generally ruled against the vessel.

**164.\* What is postliminy?**

It is derived from the fiction of similar title in the Roman law by which persons, and to a less extent, things captured by an enemy were restored to their original legal status when again coming under the power of the nation to which they formerly belonged.

The right of postliminy, so far as international law is concerned, can be said to deal no longer with the restoration of persons, but now refers to the restoration of things, and less to movable things than to real property and territory.

It requires that property captured by the enemy and recaptured by the fellow subjects or friends of the original owner, does not become the property of the recaptor, but is to be restored upon certain conditions to the original owner.

**165. What is the rule as to restoration to the original owner of ships and good recaptured at sea?**

The United States adopts the rule of restoration to the original owners, upon their claim, on the payment of such sum as the court may award as salvage, costs, and expenses, provided the property had not been condemned as prize before its recapture, by any competent authority.

Restitution with salvage, and under varying conditions, is made by Great Britain, the United States, Portugal, Denmark, Sweden, Holland, France, and Spain.

**TELEGRAPHIC CABLES.**

**166.** What are the rules as to telegraphic cables in war time?

The protection of submarine cables outside territorial waters is regulated by the international convention signed at Paris, March 14, 1884. This convention to which the United States is a party, expressly provides that its stipulations "shall in no wise affect the liberty of action of belligerents."

In war time, the action of the belligerents, irrespective of the ownership of the telegraphic cables, will probably be in accordance with rules similar to those laid down in Stockton's Naval War Code, which were as follows:

"(a) Submarine telegraphic cables between points in the territory of an enemy, or between the territory of the United States and that of an enemy, are subject to such treatment as the necessities of war may require.

(b) Submarine telegraphic cables between the territory of an enemy and neutral territory may be interrupted within the territorial jurisdiction of the enemy.

(c) Submarine telegraphic cables between two neutral territories shall be held inviolable and free from interruption."

**167.** While a state of war exists between the United States and foreign state X, it is found that a submarine telegraphic cable owned by a neutral company and connecting hostile state X with neutral state Y is used for the transmission of dispatches hostile to the United States.

The United States naval officer in command of the fleet cruising near protests to neutral state Y against such use of the cable.

The authorities of state Y claim that they have no responsibility.

It is not possible for the United States vessel to interrupt the cable within the three-mile limit of hostile state X. The cable is, however, grappled beyond the three-mile limit in the high sea, and by order of the commanding officer is cut.

The neutral owners claim damages from the United States for injury to the cable and for interruption of service, alleging among

other reasons in support of the claim that the act of the commanding officer in cutting the cable was contrary to Article V of the Naval War Code of the United States.

Was the action of the officer proper?

(Situation 1, 1902, U. S. N. W. C.)

"1. The action of the officer in protesting against the hostile use of the cable connecting enemy state X and neutral state Y was proper action. Such action is desirable whenever possible without undue risk, of which risk the officer himself must judge. This does not imply an obligation to give such official protest or responsibility in case such protest is not made.

2. The authorities of a neutral state may assume or decline to assume responsibility for a cable connecting the neutral with a belligerent state.

3. The cable service is to be considered, when hostile, in the category of unneutral service and the penalties should be determined accordingly.

4. The neutral owners have no ground for claim for damages for injury to the cable or for interruption to service.

5. The Naval War Code of the United States makes no provision for such case, but practice and general principles justify the action of the officer in cutting the cable anywhere outside of neutral jurisdiction."

#### **RELATIONS BETWEEN BELLIGERENTS AND NEUTRALS.**

**168.\*** What is meant by the term "neutral" as applied to nations?

Neutral nations are those who, in time of war, do not take part in the contest but remain friends common to both without favoring one to the prejudice of the other.

**169.\*** What are the rights and duties of neutrals?

The rights of neutrals can be placed under two general heads:

(1) That of inviolability of territory. No hostile act should take place within the territory of a neutral, and all of its sovereign rights with regard to its territory should be fully respected.

(2) That in all matters of trade, commerce, residence, navigation, etc., the treatment of the citizens or subjects of a neutral state when brought in contact with the belligerents should be in strict accordance with treaty obligations and the rules and usages of international law.

It is the duty of neutrals to maintain strict impartiality; not to render military assistance to either belligerent; not to permit the use of their territory for hostile purposes; not to permit the passage of troops across their territory; not to permit their prize courts to be used to test the validity of belligerent captures; not to permit prizes to be sold in their ports; not to purchase any conquest made by either party; to prohibit the enlistment of their subjects by either belligerent; not to permit vessels of war of either party to increase their armament, or crew, or to take on board arms or military stores in their ports, or to make repairs to facilitate their cruising against their enemy; to restore to the original owners any property illegally captured in their territory.

While not a duty, it has become customary for neutral states to issue proclamations of neutrality upon the breaking out of war. This practice has several advantages of considerable importance. It calls the attention of its citizens to the neutrality or foreign enlistment act, and it proclaims the policy of the government towards the belligerents, particularly as to entry and use of its ports and waters by belligerent cruisers.

170.\* Under what rules could our war vessels enter British ports during the civil war?

An order of the British government, issued in January, 1862, prohibited all vessels of war and privateers of either belligerent from using any port or roadstead in the British dominions as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment. No supplies, except provisions necessary for the crews, were to be furnished such vessels. Coal could be furnished only in such quantity as would enable a vessel to reach the nearest port of her own country, or a nearer destination, and no coal could again be supplied to the same vessel in any British port within three months.

**171.\*** What rules were agreed upon by the treaty of Washington, 1871, between the United States and Great Britain regarding the duties of neutrals?

“ A neutral government is bound,

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.”

**172.** What were the provisions of the neutrality proclamation of France, of May, 1861?

It contained the following clauses:

“ 1. No vessel of war or privateer of either of the belligerent parties will be allowed to enter or stay with prizes in our ports or roadsteads longer than twenty-four hours, except in a case of compulsory delay.

2. No sale of goods belonging to prizes is allowed in our ports or roadsteads.

6. A neutral must not during a war acquire by purchase or otherwise any conquest made by either of the belligerents.

7. The neutral state must prohibit the enlistment of its citizens or subjects for the service of a belligerent.

**173.** What was the substance of the proclamations issued by President Grant, in 1870?

By the first issued August 20, 1870; at the outbreak of the war between France and Prussia, among the acts forbidden were those of increasing or augmenting the force, armament, or warlike equipment of any belligerent vessel of war within the territory of the United States, also the beginning or setting on foot, or providing or preparing means for any military expedition against the territory of either belligerent.

The movements of the belligerent cruisers on our coast and in our waters being such as to call for more explicit and stringent rules, President Grant, on October 8, 1870; issued a second proclamation, by which the belligerent ships were not permitted to frequent the waters of the United States for the purpose of preparing for hostile operations, or as ports of observation upon the ships of the other belligerent, and they were forbidden to leave the waters of the United States, from which a vessel of war, privateer, or merchant vessel of the other belligerent had sailed, until after the expiration of twenty-four hours from its departure. Belligerent vessels were not to use the ports of the United States except in case of necessity, and they were to leave port twenty-four hours after provisions had been secured or the necessary repairs effected. No supplies other than those necessary for the subsistence of the persons on board were to be taken, and only sufficient coal to take the vessel to the nearest European port of her own country, and until her return to such port no coal was to be supplied oftener than once in three months.

Belligerent ships of war, generally, entering ports of the United States were to remain but twenty-four hours, except in case of stress of weather, or for provisioning, or repairs.

**174.\*** What is meant by respect for neutral shores?

No operations of war are to be carried on within a marine league of such shores.

**175.\*** You are in command of a vessel of war lying in the neutral harbor of Pernambuco during war; you see an enemy in the offing, becalmed, beyond nautical jurisdiction. You are unable to proceed to sea with your vessel on account of repairs being

made to your engines. May you fit out a boat expedition and go out and attack the vessel?

No. It would be a use of neutral territory for purposes of war which is not permitted. This prohibition is not extended to remote uses, such as procuring provisions, etc., which the law of nations universally tolerates; but no proximate acts of war are in any manner to be allowed to originate on neutral territory.

176.\* Have you a right to use a neutral port to obtain supplies?

Yes; subject to the conditions imposed by the neutral, which usually restrict the supplies to those for the subsistence of the persons on board and to a limited supply of coal, sufficient only to take the vessel to the nearest port of her own country, and until her return to such port no coal is supplied usually oftener than once in three months. All belligerents must be treated alike in this respect.

177. If, on August 20, 1898; a United States war ship had entered the harbor of Hongkong to take coal for San Francisco or Honolulu as might be permitted, and the commander had been informed that he could take only coal enough to carry the ship to Manila as that was the "nearest port of her own country," should he protest, and why?

What constitutes a "port of a home country," and why?

(Situation 4, 1902, U. S. N. W. C.)

"The commander should protest against the decision that Manila, a port simply under the military control of the United States for the time being, was for the ship 'the nearest port of her own country.'"

This protest should be on the ground that military occupation does not transfer nationality.

He should state that the term "port of her own country," is one within the political sovereignty of the flag of the vessel and not any port temporarily occupied by the forces under the same flag."

178.\* Have you a right to send prizes into a neutral port?

Yes; if the neutral does not object. Otherwise, no, except in cases of distress, perils of the sea, etc.



It may be considered that the best usage, unless it is otherwise provided by treaty stipulations forbids belligerents to bring prizes into neutral ports except in case of stress of weather, danger, or want of supplies necessary to their navigability, and then the stay should be only so long as their necessities require.

179.\* May a belligerent send her prizes into a neutral port and there dispose of them?

No.

180.\* If a vessel that is captured escapes into a neutral port is the neutral bound to give her up?

No.

181. When may a belligerent capture the property of a neutral?

Neutral vessels, violating blockade or carrying contraband destined for the enemy, are subject to capture.

Irrespective of the character of her cargo, or her purported destination, a neutral vessel is liable to seizure if she—

(1) Attempts to avoid search by escape; but this must be clearly evident.

(2) Resists search with violence.

(3) Presents fraudulent papers.

(4) Is not supplied with the necessary papers to establish the objects of search.

(5) Destroys, defaces, or conceals papers.

The papers generally to be expected on board of a vessel are:

(1) The register.

(2) The crew list.

(3) The log book.

(4) A bill of health.

(5) A charter party.

(6) Invoices.

(7) Bills of lading.

A neutral vessel carrying hostile dispatches, when sailing as a dispatch vessel practically in the service of the enemy, is liable to

seizure; but not when she is a mail packet and carries them in the regular and customary manner, either as part of the mail in her mail bags, or separately, as a matter of accommodation and without special arrangement or remuneration. The voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

A neutral vessel in the service of the enemy, in the transportation of troops or military persons, is liable to seizure.

The President, by his proclamation of April 26, 1898, declared:

"2. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag."

**182.\* Is a neutral liable for carrying dispatches?**

A neutral vessel carrying hostile dispatches, when sailing as a dispatch vessel practically in the service of the enemy, is liable to seizure.

**183.** States X and Y are at war. A port of X is duly declared under siege by the land forces of Y, and all communication with the port is declared closed, and all communication except by sea is cut off. Y is not maintaining an effective blockade of the port. A United States merchant vessel carries in flour for the use of the citizens and sells it at the port, when departing is seen just at the entrance of the port by a cruiser of Y, chased into the open sea, and there seized.

The captain of the merchant vessel, when brought into port, requests the assistance of the commander of a war vessel of the United States in obtaining his release, referring to a telegram of the Navy Department in the Spanish war which contained among other items: "Neutrals have a right to trade with ports not proclaimed blockaded."

What action should the commander take, and why?

(Situation 8, 1902, U. S. N. W. C.)

"The commander of a United States war vessel should inform the captain of the merchant vessel that the state of actually ex-

isting siege of the port made the act of carrying supplies to the port of Y, one which constituted a departure from neutral duty and rendered the merchant vessel liable to penalty.

He could assure the captain that he would endeavor to make sure that he should have a fair trial."

"In the 'Situation' under consideration a siege is duly proclaimed and maintained by the forces of state Y. This siege is so effective that all communication with the port of state X, except by sea, is cut off. Under such circumstances it is held that the actions of neutrals are judged by the laws of siege rather than the laws of blockade."

"There is an important distinction between sieges and blockades. The former are, as a rule, undertaken with the object of capturing the place besieged, while the usual object of the latter is to cripple the resources of the enemy by intercepting his commerce with neutral states."

Halleck, reviewing earlier writers, says:

"Grotius considers the carrying of supplies to a besieged town or a blockaded port as an offense exceedingly aggravated and injurious; both agree that a neutral so offending may be severely dealt with; Vattel says that he may be treated as a public enemy. The views of these distinguished founders of international law are fully concurred in by the opinions of modern publicists, and by the prize courts of all countries."

"The portion of the telegram to which reference is made is upon page 298 of *Naval Operations of the War with Spain*". . . . .

"This telegram was not intended to enunciate a general principle but merely to give instructions on a particular case which arose under 'certain orders.' "This telegram, as shown in the full report, was not intended to apply to a state of siege, but merely to ordinary blockade of the coast."

**184.\*** When has a neutral the right to inquire into the validity of a capture?

When the capture is supposed to have been made within the territory of the neutral concerned, or when the capture is claimed to have been made by an armed vessel fitted out in the neutral territory.

185. The relations existing between the two leading nations upon the continent of Europe, France and Germany, have become so strained as to make an outbreak of hostilities imminent and highly probably. Both countries are mobilizing their military and naval forces.

In the French ports of Dunkirk, Havre and Cherbourg, a large fleet of naval and mercantile vessels are being assembled, the latter apparently with a view to employment as transports and supply vessels. A large naval force of Germany is being concentrated and assembled in and about the North Sea, especially at Wilhelmshaven and the vicinity of the Kiel Canal; cruising between the North Sea and the terminus of that canal and Heligoland.

On account of the scarcity of French tonnage for the transportation of troops, in what appears to be a maritime expedition, vessels of other nationalities are chartered, at high rates for this purpose, by the French Government. Among other vessels thus chartered are two large American merchant steamers, capable of carrying 1,600 men—infantrymen.

These vessels lying at Havre, have taken on board troops to their fullest capacity; the vessels, being simply chartered, are officered and manned by Americans and fly the American flag. For their navigation their masters are responsible, but the military control of the troops they carry, as well as the direction of their general movements, is in the hands of the French officers on board.

The vessels assembled at Havre, having completed their loading, sail upon a certain date, and, off Dunkirk, join the vessels that have been preparing at Cherbourg and at Dunkirk. The conveying force is one composed of many vessels of war of the heaviest tonnage and armaments. The destination of this expedition is not made known, and, at the time of its departure from the various ports, war had not been declared between the two countries.

The expedition sails in the direction of Skager Rack. Shortly after leaving the vicinity of Dunkirk, the expedition is sighted by German lookout vessels, some accompanying the expedition, others disappearing in the direction of Heligoland. Shortly after this occurrence, a heavy fog shuts down and some of the transports lose touch with the main body of the expedition. One of Amer-

ican steamers, the Rio Grande, soon after finds itself in the midst of a detached German squadron consisting of four vessels. Being boarded by one of these vessels, and the discovery being made of the service in which she was employed, the Rio Grande, still flying the American flag, was directed to follow the squadron. The firing of heavy guns and the view from a partial clearing of the fog giving evidence of the occurrence of an engagement, the Rio Grande was placed under the convoy of the smallest of the German vessels, the others going to the scene of the engagement. The Rio Grande was conducted to the anchorage off Heligoland, anchoring under the guns of the convoying cruiser. At this anchorage you lie in command of the Minneapolis, and to you, as its commanding officer, appeal is made by the master of the Rio Grande for protection and release, promise being made of return to Havre. This being refused by the German naval commander and while the matter was in abeyance, the master of the Rio Grande, at the instigation of the senior French officer on board, attempted to escape with his ship from the custody of the German. The ship and flag are fired upon by the German cruiser.

At this juncture what action do you take?

(Situation 1, 1896, N. W. C.)

War being imminent the hostile destination of the troops embarked is probable.

The owners of the American steamers, in accepting a charter to carry French troops and placing the movements of their vessels under the control of the French officers, evidently knew that they were taking war risks, as they demanded and received war rates. A declaration of war is not necessary to create a war in fact. The nature of the risks they accepted is shown in Hall, page 626, where it is stated that a neutral individual who makes a specific bargain to carry dispatches or persons in the service of the belligerents, for belligerent purposes, personally enters the service of the belligerent. Wheaton, page 563, states:

"A neutral vessel which is used as a transport for the enemy's forces is subject to confiscation if captured by the opposite belligerent, nor would the fact of her having been impressed by violence

into the enemy's service exempt her." See also Snow's lectures, Sec. 6, page 144.

The action of the German commander in sending the *Rio Grande* to Heligoland was correct, especially as hostilities had already commenced. But even if he had no knowledge that hostilities had actually begun, it would have been his duty to have captured the *Rio Grande* and carried her into a German port for trial. The hostile intent of the French was so evident to the Germans that they had "concentrated a large naval force in and about the North Sea." The departure of the French fleet from its own coast might, therefore, be properly considered a hostile act.

The right of a nation to preserve itself from injury by anticipating an attack is a perfect right. It is the right of security and is incidental to the right of self-preservation. Twiss, Vol. 1, page 13, par. 14. See also Snow's Lectures, Sec. 21, page 43.

The fact that the *Rio Grande* had an American register and was flying the American flag, could not interfere with this right. In the case of the *Virginus*, Snow's cases, page 181, the following quotation from Dana is made:

"The register of a foreign nation is not, and by the law of nations is not recognized as being a national voucher and guarantee of national character to all the world, and nations having cause to arrest a vessel would go behind such a document to ascertain the jurisdictional fact which gives the character to the document, and not the document to the fact."

The right, therefore, of the German to visit and search the *Rio Grande*, and, having ascertained her character, to carry her into a German port for trial, was a perfect one. The attempt of the *Rio Grande* to escape from the German cruiser was improper and rendered her liable to recapture and sinking, if necessary, to prevent her escape. In this recapture the commander of the *Minneapolis* has no right to interfere, either to prevent a German cruiser from firing upon the American flag or to recapture and restore to custody the offending vessel himself.

In contracting to carry troops for the French Government, the *Rio Grande* had committed no offense against the laws of the United States, and she had a right to carry her flag until a sentence of condemnation had been passed by a court having jurisdiction.

There is a natural feeling that the flag should not be placed in a position to be fired upon, and, therefore, the *Rio Grande* having committed an unneutral act, and made herself liable to German law should be compelled to haul down her flag until the case shall be settled, but the whole weight of authority is against this. A vessel can no more be controlled in her actions than a citizen, and, as a citizen enlisted in a foreign service has no right to put forward his citizenship as a protection, neither can a private vessel expect her flag or register to protect her in illegal traffic. The country itself cannot be held responsible for the actions of either. The enforcement of the penalty is left to the injured belligerent.

The whole law of contraband is based upon the concession by the neutral state to the belligerent state and its courts of whatever jurisdiction is necessary for self-protection.

The only duty of the commander of the *Minneapolis* would be to communicate all the facts of the case to the United States ambassador at Berlin, and to offer his assistance, so far as may be considered necessary, in securing a fair trial for the officers and crew of the *Rio Grande*.

**186.** In case a belligerent vessel is captured in neutral waters is the capture good as between the belligerents? Whose duty is it to demand redress?

As between a belligerent and his enemy the capture is good prize. The capture is an offense towards the neutral state by the captor. As between the captive and the neutral government, it behooves the neutral government, whether spontaneously or at the instigation of the injured shipowner, to address prompt complaints to the government of the wrongdoer, or otherwise to grant redress for the wrong, an obligation which only, perhaps, ceases when the vessel attacked within the neutral zone attempts to shift for herself and to repress force by force. Should a captor or his agent be bold enough to bring his prize at a subsequent period into a port of the neutral government, that government may vindicate its offended jurisdiction by seizing property and liberating prisoners taken in violation of its protectorate.

**187.** If a belligerent vessel attacked in neutral waters resists by force instead of asking for protection from the neutral, what is the effect?

It was held in the case of the *General Armstrong*, that the captain not having applied from the beginning for the intervention of the neutral, and having had recourse to arms to repel an unjust aggression, had failed to respect the neutrality of the territory, and had released that sovereign of the obligation to afford him protection by any other means than that of a pacific intervention, and that no indemnity is due by Portugal for the loss of the vessel.

In the case of the British ship *Anne*, it was decided by the Supreme Court of the United States in 1818, that if the captured ship first commenced hostilities in neutral waters she thereby forfeited neutral protection. In the same decision Judge Story delivered the opinion that a capture made in neutral waters is, as between enemies, deemed to all intents and purposes a legal capture. The neutral sovereign alone can call its validity in question. This latter principle has been repeatedly affirmed by courts in other cases.

**188.** If a neutral state tamely submits to violations of its territory by one belligerent, what is the effect?

It forfeits the immunities of its neutral character with respect to the other and may be treated by it as an enemy.

**189.** Is there any difference as to the duties and obligations of neutral states and of their citizens?

Yes, a decided difference. The neutral state is under certain obligations to the belligerents, but between the belligerents and the neutral individual, no legal obligation can be said to exist. Each individual owes duty only to his own sovereign, and acts done by individuals to injure a belligerent are criminally wrong only so far as they compromise the state of the individual.

In return the belligerent state is under obligation only to other states, and its conduct toward the neutral individual is limited only by international agreements and by the accepted rules and



usages of international law; within these rules the belligerent is at liberty to act toward the neutral individual as he may deem necessary for the prosecution of a war. Such action is generally performed by a judicial system of its own, the penalties being prescribed as well as enforced by itself.

**190.** May citizens of a neutral state loan money to one of the belligerents?

Yes. Woolsey says: "The private person, if the laws of his own state or some special treaty does not forbid, can lend money to the enemy of a state at peace with his own country or can enter into its service as a soldier, without involving the government of his country in guilt."

**191.** May citizens of a neutral state sell arms and munitions of war to a belligerent?

Yes. A sale of arms directly or indirectly by a neutral state to one or both of the belligerents is a violation of neutral obligations, but as to citizens doing so the matter is different. The law of nations sanctions it, subject to the liability of the confiscation of such portions of these arms as shall fall into the hands of the other belligerent, on the way to its enemy's ports.

**192.** May citizens of a neutral state send armed vessels to belligerent ports for sale?

Yes, provided it be done as a bona fide commercial transaction, a ship in this situation being considered merely an article of contraband of war. Without violating our law such a vessel may be sent, so equipped, under the flag and papers of the country of the owner, with no more force of crew than is suitable for navigation, with no right to resist search or seizure, and to take the chances of capture as contraband merchandise, of blockade, and of a market in a belligerent port.

**193.\*** What is *droit d'angarie*?

This is the right, sometimes exercised by a belligerent, of detaining the vessels of a neutral and using them and their crews in

military or naval expeditions. It is now considered justifiable only in cases of extreme necessity.

It can only be excused, and perhaps scarcely justified by that clear and overwhelming necessity which would compel an individual to seize his neighbor's horse or weapon to defend his own life.

The language generally used in treaties of the United States where any reference is made to the subject is that "vessels of either power shall be detained and used only in cases of urgent necessity, and that the owners of the vessels so detained shall obtain full indemnity for their freight as well as for the loss occasioned by the delay."

### CONTRABAND.

194.\* What is meant by contraband of war; is it well defined?

194a.\* Explain difference between positive and occasional contraband?

Contraband is not well defined. Great maritime powers when engaged in war have enlarged the list; the nations generally neutral have contracted it. Treaties defining what is contraband have differed greatly.

Stockton's Naval War Code states as follows:

"Art. 24. The term 'contraband of war' includes only articles having a belligerent destination and purpose. Such articles are classed under two general heads:

(1) Articles that are primarily and ordinarily used for military purposes in time of war, such as arms and munitions of war, military material, vessels of war, or instruments made for the immediate manufacture of munitions of war.

(2) Articles that may be and are used for purposes of war or peace, according to circumstances.

Articles of the first class, destined for ports of the enemy or places occupied by his forces, are always contraband of war.

Articles of the second class, when actually and especially destined for the military or naval forces of the enemy, are contraband of war.

In case of war, the articles that are conditionally and unconditionally contraband, when not specifically mentioned in treaties previously made and in force, will be duly announced in a public manner."

Art. 36 gives lists of articles which until otherwise announced, are to be treated as contraband of war. One list is of absolutely contraband and the other of conditionally contraband.

**195.\*** What are always contraband of war; what are occasionally contraband; when are persons contraband?

See preceding question. Persons in the military or naval service of a belligerent are sometimes said to be contraband.

**196.** What is the general law of contraband?

It may be given under two heads as follows:

(1) A state may not lawfully furnish contraband articles to either belligerent, whether shipment be by land or water.

(2) The citizens of a neutral state may sell contraband articles to a belligerent (ships of war or torpedo boat excepted), subject only to the risk of capture by the cruisers of the opposing belligerent. That is to say, such trade is legal from a neutral point of view and illegal from the belligerent point of view.

**197.\*** What conditions are necessary to constitute contraband of war?

War between two countries; material which may be used for war-like purposes; and hostile destination.

**198.\*** What is necessary to detain a vessel carrying contraband of war?

Knowledge that the ultimate destination of the goods is the enemy's country or a blockaded port.

**199.\*** What persons of the enemy embarked in a neutral ship are contraband?

**199a.\*** When are diplomatic dispatches contraband?

**199b.\* What papers of a belligerent are contraband?**

Persons in the military or naval service of a belligerent, military dispatches, and diplomatic dispatches for a belligerent purpose have been classed as contraband. The carrying of them is not really a contraband act, but is sufficiently like such an act to be generally discussed under the head of contraband of war. The act is more in the nature of a direct service to the belligerent. Hall classes these as analogues of contraband.

Dana sums up the whole subject of carrying persons and dispatches, by giving three rules which he claims to be in accord with the decisions of English prize courts and with the policy of the English government, as well as with decisions of the prize courts and national acts of other states. They are:

(1) If the vessel is in actual service of the enemy as a transport, she is to be condemned. In such a case it is immaterial whether the enemy has got her into his service by voluntary contract or fraud. \* \* \* The truth is, if the vessel herself is under the control and management of the hostile government, so as to make that government the owner pro tempore, the true ground of condemnation should be as enemy's property. \* \* \*

(2) If a vessel is not in the enemy's service, still, if the master knowingly takes for the enemy's government or its agents, persons or papers of such a character or destination, that the transporting them under the neutral flag is an actual belligerent service to the state, it is an unneutral act which forfeits the vessel. If he avers ignorance of the character of the persons or papers, all the circumstances are to be considered for the purpose of determining not only the truth of his averment, but whether his ignorance, though real, is excusable. He is bound to a high degree of diligence in such cases, and if the circumstances fairly put him on inquiry, which he does not properly pursue, he will not be discharged.

\* \* \* \* \*

(3) It is not an unneutral intervention, entailing a penalty, to knowingly carry a dispatch of a character recognized as diplomatic in the international intercourse of states. Of this class is a dispatch passing either way between the enemy's home government

and its diplomatic agent in a neutral country, or between a neutral government and its diplomatic agent in an enemy's country.

\* \* \* \* \*

The rules, laid down by the U. S. Navy Department in the war with Spain, were in accordance with the above;

"A neutral vessel carrying hostile dispatches, when sailing as a dispatch vessel practically in the service of the enemy, is liable to seizure; but not when she is a mail packet and carries them in the regular and customary manner, either as part of the mail in her mail bags, or separately, as a matter of accommodation and without special arrangement or remuneration. The voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade."

"A neutral vessel in the service of the enemy, in the transportation of troops or military persons, is liable to seizure."

**200.\*** Can a person in civil life, although an enemy's subject, become contraband of war?

No.

**201.\*** What is the penalty for carrying contraband?

The common practice is to take the vessel with its cargo into a port of the captor, where the articles of contraband are duly condemned; but the vessel itself is ordinarily visited with no further penalty than loss of time, freight, and expenses. If, however, the ship and cargo belong to the same owners, or if the owner of the former is privy to the carriage of the contraband goods, the vessel is involved in their fate. Ships have also been condemned for having on board articles contraband under a treaty to which their country was a party, and for the fraudulent circumstances of false papers and false destination. (Hall.)

**202.** What is the penalty for carrying belligerent persons or hostile dispatches?

The dispatches are seized; the persons become prisoners of war; and the ship is confiscated for the unneutral act.

**203.\*** Explain fully the relations of ship and cargo in case of carrying contraband, as distinguished from breach of blockade.

In the case of ordinary contraband, the contraband merchandise is confiscated, but the vessel usually suffers no further penalty than loss of time, freight, and expenses. In case of breach of blockade, vessel and cargo are both confiscated.

**204.\*** When does confiscation of a vessel carrying contraband of war follow?

See question 201.

**205.\*** In case the master of a vessel, being neutral, takes contraband persons aboard under duress, is he liable to seizure?

Yes. The question as to seizure is simply whether the vessel is in the enemy's service. The neutral government must seek redress from the government of the belligerent who so used the vessel.

**206.\*** When does the liability for carrying contraband commence and when does it cease?

It begins from the moment the vessel with the contraband articles on board quits her port with a hostile destination, and ceases only when the illegality ceases to exist. The liability ceases for instance when the contraband goods have been deposited at the port of destination.

A mere touching at one or more neutral ports, nor even a transshipment of the cargo at a neutral port, will not make a voyage lawful when the intention is to go to an enemy's port or fleet with the contraband.

**207.** You board a distilling ship with large storage tanks filled with water which, from what you can gather, is to supply the boilers of a large fleet of the enemy, said to be cruising in your vicinity. The ship is under neutral flag, with plain evidence of neutral ownership and registry. There is no charter party shown, and the master states even if his destination is to an enemy, and his cargo of water considered contraband, he will free himself by pumping the

water overboard and proceed, if allowed, either under convoy or otherwise, to the nearest port of his own country. You are separated by night and bad weather from your own ship. An American port and the port of the neutral ship are both near by. You are strong enough to hold and seize the steamer.

To which port do you go, what action do you take, and why?

(Situation 2, B, 1899, N. W. C.)

"The distilling ship should be seized as a vessel engaged in the service of the enemy, notwithstanding the neutrality of her nationality. She is presumably engaged in unneutral service, and, as such, both the ship and cargo are subject to adjudication, condemnation, and confiscation. Hence she should be sent to the American port near by.

Modern naval warfare has given rise to increased and complex needs for the ships engaged in active service. The use of fresh water for the boilers is a very important matter, contributing largely to the long life of steam generators and to their efficient condition. The status of the ship used for this purpose is the same as that of a collier or general supply ship. The absurdity of condemning the cargo alone—as if she were a carrier of a contraband article (water) only—is evident. It is not the contraband character of her cargo but the general service of the vessel with her peculiar fittings, that makes her so valuable as an auxiliary to the fleet of the enemy in whose service she is practically included.

\* \* \* \* \*

There should be sufficient evidence to justify the opinion that the distilling ship is in the continuous or present employ of the enemy as an auxiliary to its hostile operations and to its fleet. The absence of the charter party bears upon this point. If there is sufficient doubt as to the matter, i. e., whether the service was a single one and is concluded, or whether on the other hand, the ship's services were duly secured for an operation or campaign, the neutral ship is entitled to its benefit and should be released. If, however, there is good reason to believe that she is employed in the enemy's service, then, as Mosely says, "A friend's ships in a foe's service are foes."

\* \* \* \* \*

**208.\*** What is "droit d'achat or preemption?"

A right resulting from a compromise between belligerent and neutral by which the former on capturing goods of the latter that are destined for the enemy may seize them and appropriate them to his own use upon the payment of the market price and a fair profit. It applies to goods classed as occasional contraband. The English practice is to pay a reasonable indemnification and a fair profit, but not the price which could be obtained in the enemy's ports.

**209.** War existing between the United States and a European power, you are exercising the right of search in Eastern Asia, to facilitate operations against a colonial port of the hostile country in Northern China. The port is blockaded by sea, but only partly invested on the land side. It is especially important that no supplies that will continue or facilitate defense be allowed to reach this blockaded port by sea, or indirectly overland.

Cruising off shore you meet an Italian (neutral) ship carrying, as part of her cargo, rice and other provisions that are marked for mercantile firms in the besieged port. The papers and circumstances are very clear as to the ship's destination, which is a neutral port on the same peninsula as the besieged port.

What action do you take toward the Italian vessel?

What action do you take toward a German vessel from Hamburg under similar circumstances?

(Situation 2, 1900, N. W. C.)

"A. In the treaty between Italy and the United States of 1871, it is provided that in event of war between the two countries, the private property of their respective citizens, with the exception of contraband of war and evasion of blockade, shall be exempt from capture or seizure by either party. It also provides that the following and no other articles shall be considered as contraband, and gives lists. Rice and other provisions are not to be found in these lists, consequently you cannot, under this treaty, seize or detain this Italian vessel or any of her cargo.

B. There are no treaties with the Hanseatic cities, the North



German Union nor with the German Empire specifically defining contraband goods. The treaty with Prussia made in 1799 and in a treaty with Prussia of 1828, it is provided that contraband goods intended for the enemy are not to be confiscated, but may be detained for such time as the captor may consider necessary or may be bought by the captor for his own use. If the vessel carrying contraband surrenders such matter, she can be released and proceed on her voyage. Military stores destined for the enemy are designated as contraband of war. Considering that, in this case of blockade and partial investment, starvation is necessarily relied upon as a means of reducing the port and town, it is not too much to consider provisions as military stores, and hence contraband of war.

The next question is does the German Empire and its vessels succeed to the treaty rights and obligations of Prussia, and do Hamburg vessels acquire, by union with the German Empire, rights and obligations that belong to one of the other constituent parts of the empire?

It is considered from the precedents and authorities that the answer to this is, yes.

Your action should be to detain the vessel and cargo of the Hamburg vessel, as the voyage is a continuous one and the provisions contraband, because, though primarily bound to a neutral port, the ultimate destination is a besieged place of the enemy.

If the German vessel offers to surrender the contraband, or if the purchase of it is considered desirable and this opportunity of purchase is offered, the vessel can be released and allowed to proceed, the contraband goods having been disposed of in either of the ways suggested."

**210.\*** Under what conditions would a vessel's destination be considered hostile?

When carrying hostile dispatches, persons in the military or naval service of the enemy, or her cargo or part of it is contraband, destined ultimately to reach the enemy.

**211.\*** Under what circumstances should a vessel's destination be considered neutral?

When her cargo is not ultimately destined to reach an enemy, and when sailing for a port of either belligerent not blockaded and having no portion of her cargo contraband and no hostile dispatches or passengers in the military or naval service of such belligerent.

**212.\*** Is the fact that the destination of the vessel is neutral conclusive evidence as to the destination of the cargo?

No. For she may be carrying goods to a neutral port situated near the ports of the enemy, the goods to be there transshipped to the enemy's country. Even if the goods are landed and the custom dues regularly paid, and all formalities of a similar character gone through in the neutral port, if it can be shown that the ultimate destination of the goods is a port of the enemy, the ship is liable to seizure from the commencement of the voyage.

**213.\*** What is the doctrine of continuous voyage and how has it been applied by the U. S. Courts?

The doctrine of continuous voyage, first applied by the English courts, under the rule of the war of 1756, that neutral vessels were not permitted to engage in direct trade between the enemy and his colonies, was, that, neutral vessels which touched at neutral ports to avoid this rule were still subject to condemnation.

In this way the doctrine of continuous voyage was declared and made applicable to the colonial and by analogy to the coasting trade of the belligerents.

During the American Civil War, the rule of continuous voyage became the practice of the American prize courts and was applied to vessels trading between neutrals and the Confederates.

As applied by the United States Courts, the rule of continuous voyage is, 'the mere touching at a neutral port, or even a transshipment at such port, will not be considered as breaking the voyage, if the intention was, on sailing, to carry contraband goods to the enemy's ports or to break the blockade instituted against them. The voyage of the contraband goods is to be considered a unit from the port of lading to the port of delivery, and the vessel and cargo are subject to capture.'

This doctrine has not been accepted by the continental publicists.

**BLOCKADE.**

**214.\*** What is meant by blockade; what kinds are there?

**214a.\*** Explain fully different effects of blockade by notification, by de facto blockade, and pacific blockade.

**214b.\*** What is the difference between blockades de facto and after notification, in their effects on neutral vessels?

Blockade consists in the interception or prevention of access to ports or territory of an enemy. The term is used more especially with reference to naval forces preventing communication by water. The usual object is to cripple the resources of the enemy by intercepting his commerce with neutral states.

Blockades may be military or commercial, or partake of the nature of both.

A military blockade:—is directed against the military or naval forces only of the enemy, and may partake of the nature of a land and sea investment of a besieged city or seaport, or may consist of a masking of an enemy's fleet by another belligerent fleet in a port or anchorage where commerce does not exist.

A commercial blockade:—consists of operations against an enemy's trade and revenue, either localized at a single important seaport, or as a more comprehensive strategic operation, by which the entire sea frontier of an enemy is placed under blockade.

Blockades may be "blockades by notification," or "de facto blockades."

A blockade by notification:—is established by a proclamation and the presence of a sufficient force to efficiently maintain it. Notice is given of its establishment through diplomatic channels to the neutral states. A notice to a foreign government is a notice to all the individuals of that nation; and they are not permitted to aver ignorance of it. A blockade by notification is presumed to continue until notice to the contrary is given, or until the blockade is raised by the blockading force being driven away or withdrawn.

A de facto blockade:—begins and ends with the fact that a sufficient force is present to efficiently maintain it. It is established without notification and does not condemn any vessel attempting

to enter the harbor unless previously warned off. If a vessel, however, has full knowledge of a blockade before she enters on her voyage, she has no right to claim a warning when taken in the act of attempting to enter.

Pacific blockades:—or blockades without a state of war, are a growing means of coercion short of war, which have come into use since 1800. Formerly blockade was considered a war right only. The status of pacific blockades is not definitely settled in international law. The tendency seems to be that they will be regarded as permissible by the laws of nations only under the conditions that vessels of foreign flags can enter freely, notwithstanding the blockade; that the pacific blockade be formally declared and notified and maintained by sufficient force, and that vessels of the blockaded nation which do not respect the blockade can be sequestered; but that when the blockade ceases these vessels and their cargoes should be restored to their owners, but without compensation.

**215.** What is the established law as to blockades?

(a) Blockades to be binding must be effective, that is, maintained by a force sufficient to make hazardous the ingress to and egress from a port.

(b) It is absolutely necessary that the neutral should have had notice of the blockade in order to render him subject to the penalty.

(c) The penalty for violation of blockade in war time is confiscation of the offending vessel and cargo, unless the owners of the cargo can remove their guilt by direct evidence.

**216.\*** How is a blockade established?

By sending a sufficient force to maintain it efficiently, and notifying neutrals.

**217.\*** What notice must be given of blockade?

It is absolutely necessary that the neutral should have had notice of the blockade before his vessel can be seized for its violation. This notification may be general, by proclamation, and communicated to the neutral states through diplomatic channels; or it may

be local, and announced to the authorities of the blockaded port and the neutral consular officials thereof. A special notification may be made to individual vessels, which is duly endorsed upon their papers as a warning. A notification to a neutral state is a sufficient notice to the citizens or subjects of such a state. If it be established that a neutral vessel has knowledge or notification of the blockade from any source, she is subject to seizure upon a violation or attempted violation of the blockade.

The notification of blockade should declare, not only the limits of the blockade, but the exact time of its commencement and the duration of time allowed a vessel to discharge, reload cargo, and leave port.

**218.** What action is usually taken by neutral governments after diplomatic notice is given of a blockade?

It is customary for a neutral government immediately on receiving notice from a belligerent that it has blockaded a port, or ports, or coast of its enemy, to issue a proclamation to inform its citizens of the existence of the blockade, its nature, and place blockaded, and to warn them that any act in violation of the blockade will be at their own risk and peril.

**219.\*** How is warning off a blockaded port given and what is its effect? What is the immediate duty of a neutral master after warning at line of blockade?

**219a.\*** What measures should be taken when warning a vessel at their own risk and peril.

"Vessels appearing before a blockaded port, having sailed before notification, are entitled to special notification by a blockading vessel. They should be boarded by an officer, who should enter upon the ship's log or upon its papers, over his official signature, the names of the notifying vessel, a notice of the fact and extent of the blockade, and of the date and place of the visit. After this notice, an attempt on the part of the vessel to violate the blockade makes her liable to capture."

If not able to board, a verbal order or warning is sufficient.

After this warning the neutral is bound to show by his acts his intention to obey at once the warning received. If after a short delay there is reason to suppose that he is not pursuing a course to take him away from the vicinity of the port, a capture may reasonably follow.

**220.\*** What is necessary to an effective blockade?

The maintenance of a force sufficient to make ingress and egress of vessels dangerous. If the blockading force be driven away by stress of weather and return without delay to its station, the continuity of the blockade is not thereby broken. If the blockading force leaves its station voluntarily, or is driven away by the enemy, the blockade is abandoned or broken. The abandonment or forced suspension of a blockade requires a new notification of blockade.

**221.\*** When is a blockade null and void?

When it is not properly maintained.

**222.\*** What constitutes breach of blockade?

**222a.\*** A blockade having been established after due notification and maintained by an adequate force, what acts will subject a neutral to capture and condemnation.

1. Sailing for a blockaded port with knowledge of blockade however acquired, unless an alternative destination is clearly shown on the ship's papers and inquiries made before arriving in suspicious vicinity. Such an inquiry must be made at such a distance from the blockaded port as to allay any suspicion of an intent to slip in.
2. Entering or quitting a blockaded port, or showing any intention of doing so.
3. Entering blockaded port during temporary absence of blockaders caused by stress of weather, or their being in chase, and where the intention of returning is preserved.
4. Sailing for a blockaded port after notification, even where an intermediate neutral port intervenes and the cargo is landed or transhipped to another vessel to complete the voyage.
5. Attempting to enter after being warned off.

6. Not immediately quitting the vicinity after being warned off.

7. Sailing from an enemy's port with cargo taken on board after blockade was established, or beyond limit of time established by belligerent for neutral vessels to leave.

A breach of blockade is not an offense against the laws of the country of the neutral owner or master. The only penalty for engaging in such trade is the liability to capture and condemnation by the belligerent. The usage of different nations as to acts which constitute breach of blockade vary, the usage of the French being different from that of the English and Americans.

**223.\*** Does the blockade extend to a neutral vessel found in port when the blockade was established?

It is usual to allow such a vessel some fixed time in which to load cargo bought before the establishment of the blockade and to depart. The usual custom has been to allow 15 days.

The rule adopted by the United States in the war with Spain, was, "Neutral vessels found in port at the time of the establishment of a blockade will, unless otherwise ordered by the United States, be allowed thirty days from the establishment of the blockade to load their cargoes and depart from such port."

**224.\*** What is the penalty for breach of blockade?

Confiscation, and it falls first on the ship as the immediate agent in the offense. The cargo shares the guilt unless the owners can remove it by direct evidence. The presumption is that they knew the destination of the vessel. If ship and cargo are owned by the same persons, the cargo is condemned of course.

**225.\*** When does penalty for attempted breach of blockade attach to a neutral vessel?

"The liability of a vessel purposing to evade a blockade, to capture and condemnation, begins with her departure from the home port and lasts until her return, unless in the meantime the blockade of the port is raised."

**226.\*** If a ship has contracted guilt by breach of blockade when is the offense discharged?

Not until the end of the return voyage, unless the blockade has been raised between the time of sailing and capture.

**227.\*** May information as to the existence of a blockade be sought at the entrance to the port?

Not if the vessel has acquired knowledge of the blockade by any means.

“Should it appear, from the papers of a vessel or otherwise, that the vessel had sailed for the blockaded port after the fact of the blockade had been communicated to the country of her port of departure, or after it had been commonly known at that port, she is liable to capture and detention as a prize. Due regard must be had in this matter to any treaties stipulating otherwise.”

**228.\*** May a neutral vessel sail in good faith for a blockaded port with an alternative destination to be decided upon by information as to continuance of the blockade?

Yes, but she must obtain the information at an intermediate port, and she is not allowed to continue her voyage to the blockaded port in alleged quest of information as to the status of the blockade, but must obtain it and decide upon her course before she arrives in suspicious vicinity; and if the blockade has been formally established with due notification, sufficient doubt as to the good faith of the proceeding will subject her to capture.

**229.** Under what circumstances would a neutral not be liable for violation of blockade?

1. Sailing in ignorance of blockade.
2. Sailing for a port blockaded in name only.
3. Sailing from distant port for port blockaded, under certain treaty stipulations.
4. Sailing contingently for blockaded port expecting peace before arrival.
5. Sailing for port where common fame declares the blockade raised.



6. Entering blockaded port in distress.
7. Leaving blockaded port with cargo purchased bona fide, or in ballast, within time specified for vessels to depart.
8. Found in enemy's port after reduction, having entered previous to blockade.
9. Leaving blockaded port, being dispatched by agent of his own government, to carry distressed seamen. (Glass.)

**230.\*** Under what circumstances may a neutral vessel enter a blockaded port?

- a. When she has a license from the government of the blockading nation to do so.
- b. When she is in such a condition of distress as to require the safety and resources of the blockaded port; but this necessity must be "evident, immediate, pressing, and from its nature not capable of removal by any other means than by the course she has adopted."

**231.** What invalid excuses are often made, but which may be disregarded?

1. Approaching blockaded place simply to ascertain whether the blockade was not raised, intending to retire if found still existing.
2. Object not to bring in or take away cargo, but to get a pilot, or provisions, or to fetch away goods deposited there before the breaking out of the war.
3. Intoxication of the master.
4. Ignorance of the coast.
5. Loss of compass.
6. Desire to avoid the higher fees payable at another port.
7. Misinformation from any naval officer that the master is entitled to a warning, or that he may go in if he takes no cargo.
8. Misinformation from any private person on any point whatever. (Glass.)

**232.** What are valid excuses for breach of blockade?

1. When the vessel is in distress. See question 214.
2. Misinformation from an officer of the blockading fleet to the

master that the blockade has been raised, or that the limits of the territory under blockade are narrower than they really are. It is usually safest to let the Courts decide.

**233.\*** If a neutral vessel lands goods at a port of an enemy not blockaded, is it a hostile act?

No.

**234.\*** What effect has raising the blockade?

Vessels already captured, even though not yet under adjudication, are not to be released; otherwise, all liability ceases the moment the blockade is raised.

**235.\*** Have neutral men-of-war a right to pass a blockade?

**235a.\*** Has the belligerent the right to refuse access to, or egress from, a blockade port to a neutral man-of-war?

The right of exclusion is claimed, and in some cases, as by the French Government in the blockades of Mexico and the Argentine Confederation in 1837 and 1838, has been exercised, but it is generally waived in practice, and the custom has been to permit free egress and ingress to neutral men-of-war.

July 15, 1898, the Department of State addressed to all the foreign representatives in Washington a circular in relation to the entrance of neutral men-of-war into blockaded ports. In this circular it was stated that while there was no disposition "to restrict the courteous permission heretofore accorded to neutral men-of-war to enter blockaded ports, it is advisable that all risk of error or mischance should be avoided by due attention to the rules prescribed by prudence as well as by courtesy." To this end certain rules were provided.

The receipt of this circular was acknowledged and in no instance was objection made. On the contrary, the German Government presented certain counter suggestions, of a more stringent nature, which were accepted by the United States as embodying an arrangement for the future. The rules thus agreed on were as follows:

1. That the consent of the blockading Government, obtained

through the usual diplomatic channels, should, unless in a case of exceptional urgency, be a prerequisite to the entrance of a neutral man-of-war into a blockaded port.

2. That approach to the blockaded port should be made in such a manner that the senior officer of the blockading squadron would with certainty identify the neutral vessel, on her appearance in the blockaded belt, as the vessel of whose coming he had been notified.

3. That, in exceptional cases, such as prevented the obtaining of previous permission through the usual diplomatic channels, the decision should rest with the senior officer present of the blockading squadron.

4. That, in the departure from a blockaded port, no special formalities were requisite other than might be necessary to identify the departing neutral, such formalities to be agreed on by her commander and the officer in command of the blockade.

**236.\*** Have neutral ambassadors a right to pass a blockade?

**236a.\*** Has a belligerent a right to prevent the egress from, or ingress to, a blockaded port of the diplomatic representatives of a neutral country?

A neutral government has always a right of communication with its agents in belligerent territory. This does not imply that they have a right to pass a blockade if there are other ways of communication. They are usually allowed to pass the blockade as a matter of courtesy, unless it is dangerous to themselves.

**237.\*** Are ambassadors or consuls of the enemy accredited to neutral powers permitted to communicate with their governments?

Not if it can be prevented without injury to neutral rights. Their communications may be as important to the interests of the neutrals as to the interests of the belligerent state.

**238.\*** State the difference between closing ports by municipal order and blockade as to neutrals?

Closing ports by municipal order applies only to ports belonging to and actually under the control of the state. Third nations have

made strong objections to a state, in time of rebellion, declaring ports closed which were in the hands of insurgents, on the ground that the state had, temporarily at least lost control and sovereignty over them.

Violation of a municipal order closing ports does not authorize the belligerent right of search on the high seas, or the penalties for contraband or breach of blockade, but only seizure in territorial waters or such chase, seizure, and penalty as are authorized in times of peace, for offenses against the municipal laws of a port.

Blockade applies to ports and territory of an enemy and carries with it belligerent and greater rights and more extended penalties.

**239.\*** May a country in time of rebellion blockade its own ports?

It has been held that a country cannot blockade its own ports, that blockade applies only to an enemy's ports, and consequently, that while a country may blockade ports in the possession of the rebels, such blockade is held to be a recognition of the rebels as belligerents.

**240.\*** Being senior officer in command of a squadron you receive orders to establish a blockade of the enemy's coast, prepare instructions to govern the commanding officers of vessels.

The instructions should state carefully the exact limits of the blockade, the exact time of the beginning of the blockade, the duration of time allowed vessels in blockaded ports to discharge, reload cargo, and depart, assign the positions of the blockading vessels or their disposition, and call attention to the provisions of any G. O. of the Navy Department that is applicable, which provisions should be carefully followed.

**241.\*** At war with Spain, establish an efficient blockade of the port of Cadiz. What steps should be taken to warn neutrals; when would a neutral vessel be liable to capture for breach of blockade; what articles would be regarded as contraband?

a. See preceding question.

b. The notification may be general, by proclamation, and com-

municated to the neutral states through diplomatic channels; or it may be local, and announced to the authorities of the blockaded port and the neutral consular officials thereof. A special notification may be made to individual vessels, which is duly indorsed upon their papers as a warning.

c. If it be established that a neutral vessel has knowledge or notification of the blockade from any source, she is subject to seizure upon a violation or attempted violation of the blockade.

d. The following would be regarded as contraband:

(1) Articles that are primarily and ordinarily used for military purposes in time of war, when destined for ports of the enemy or places occupied by his forces, are always contraband of war.

(2) Articles that may be and are used for purposes of war or peace, according to circumstances, when actually and especially destined for the military or naval forces of the enemy, are contraband of war.

Art. 19, G. O., No. 492, gives lists which until otherwise announced are to be treated as contraband of war. These articles appear under the headings of "Absolutely contraband" and "Conditionally contraband."

Treaties may modify what are contraband.

**242.** While states X and Y are at war a port of X is blockaded by Y. There are merchant vessels and a war vessel of the United States in the port. The authorities of state X, set adrift rafts loaded with explosives in the hope that they will come in contact with and destroy vessels of the blockading squadron. The captains of the United States merchant vessels request the commander of the war vessel of the United States, to protest against this action as contrary to international law and as unnecessarily endangering neutral shipping.

How should the commander act and on what grounds?

(Situation 5, 1902, U. S. N. W. C.)

"The commander of the ship of war of the United States, should inform the captains of the merchant vessels that he cannot protest against necessary acts of war which clearly are aimed at the enemy.

He might, however, request of the authorities of the port an opportunity for the United States merchant vessels to remove to a point of greater safety provided the necessities of war would allow.

A belligerent is bound by the necessities of war, and should, so far as such necessities permit, guard from danger neutrals by courtesy within the port, but can not be expected to use greater care in this respect than in regard to shipping flying its own national flag."

### RIGHT OF SEARCH.

**243.** What is the object of a visit or search of a vessel?

- (1) To determine its nationality.
- (2) To ascertain whether contraband of war is on board.
- (3) To ascertain whether a breach of blockade is intended or has been committed.
- (4) To ascertain whether the vessel is engaged in any capacity in the service of the enemy.

**244.\*** Describe the right of search.

**244a.\*** Explain the right of search and how far it may be carried.

**244b.\*** Explain under what circumstances a merchant vessel becomes liable to search, how far search extends, and how conducted.

"The right of visiting and searching a merchant ship on the seas, whatever be the ships, whatever be the cargoes, whatever be the destination, is an incontestable right of the lawfully commissioned cruisers of a belligerent nation . . . because, till they are visited and searched, it does not appear what the ships, or the cargoes, or the destination, are, and it is for the purposes of ascertaining these facts that the necessity of this right of visitation and search exists." (Sir W. Scott.)

With certain exceptions, it is a war right only. It is applicable to merchant ships alone, and can be only exercised by regular commissioned vessels provided with authority as such by the government of the state. It can in war time be exercised on the high seas and in the territory of both belligerents. It cannot be exercised in places where hostilities are forbidden, that is in the territory of neutrals.

The search must be conducted in such a manner as to attain its object and nothing more. As much regard for the persons and property of the neutral must be shown as the circumstances will allow.

The right carries with it the right to demand and examine the ship's papers and the neutral is bound not only to submit to the search, but to have his vessel duly furnished with genuine documents requisite to support her neutral character. The concealment of papers material for the preservation of the neutral character justifies a capture and carrying the vessel into port for adjudication, though it does not actually require condemnation. The destruction or spoliation of papers is a still more suspicious circumstance, and in most countries would be sufficient to exclude further proof and condemn the vessel. The Supreme Court of the United States has followed the English rule and held that spoliation of papers was a circumstance open to explanation. False papers when intended expressly to deceive the belligerent by whom the capture is made, and which if accepted as genuine would clear the vessel from any taint, are sufficient cause for condemnation. Resistance to search made against a lawful cruiser, subjects the vessel in time of war to confiscation. The resistance of the neutral vessel can not be justified or excused by any order from the sovereign power of the state, as international law does not permit a neutral state to interfere with the legal rights of belligerents.

**245.\*** What is the method of conducting a visit or search?

**245a.\*** Upon boarding a suspected vessel what is the duty of the boarding officer?

In the war with Spain, the following directions, subject to any treaty stipulations, were given by the U. S. Navy Department: "After firing a blank charge, and causing the vessel to lie to, the cruiser should send a small boat, no larger than a whale boat, with an officer to conduct the search. There may be arms in the boat, but the men should not wear them on their persons. The officer, wearing only his side arms, and accompanied on board by not more than two men of his boat's crew, unarmed, should first

examine the vessel's papers to ascertain her nationality and her ports of departure and destination. If she is neutral, and trading between neutral ports, the examination goes no further. If she is neutral, and bound to an enemy's port not blockaded, the papers which indicate the character of her cargo should be examined. If these show contraband of war the vessel should be seized; if not, she should be set free, unless, by reason of strong grounds of suspicion, a further search should seem requisite."

**246.** When exercising the belligerent right of search what circumstances will justify seizure of the neutral vessel irrespective of the character of her cargo or her purported destination?

**246a.\*** What is done if a neutral vessel resists search?

The vessel should be seized if she:

(1) Attempts to avoid search by escape; but this must be clearly evident.

(2) Resists search with violence.

(3) Presents fraudulent papers.

(4) Is not supplied with the necessary papers to establish the objects of search.

(5) Destroys, defaces, or conceals papers.

The papers generally expected to be on board of a vessel are:

(1) The register.

(2) The crew and passenger list.

(3) The log book.

(4) A bill of health.

(5) The manifest of cargo.

(6) A charter party, if the vessel is chartered.

(7) Invoices and bills of lading.

**247.** Are neutral vessels under convoy by their own vessels of war subject to search in war time?

Most continental publicists maintain that they are exempt from search. English writers, following the lead of Sir William Scott, maintain that the right to visit and search merchantmen is not affected by convoy, notwithstanding assurances on the part of the con-



voying men-of-war that the vessels of the convoy are free from fraudulent intent or taint of contraband. Great Britain stands alone in this position. The policy of the United States has been to favor exemption, and this principle has been introduced into a number of treaties made with other States.

France has made similar conditions, while Germany, Austria, Spain, Italy, and the Baltic Powers, provide by naval regulations that the declaration of the convoying officer be accepted.

**248.\*** Under what circumstances can a vessel be searched in time of peace?

1. For piracy, but if detained on insufficient grounds there is a possibility of a claim for damages.

2. For violation of municipal law within territorial waters, if the chase is commenced while the vessel is within the three mile limit or has just escaped beyond it. If the vessel escapes from her pursuers she cannot be taken at another time upon the high seas by ships of the offended state.

3. It is also claimed that the right of self-defense authorizes a nation to visit and capture a vessel as well on the high seas as in its own waters, when there is reasonable ground to believe it engaged in a hostile expedition against the territory of such nation, but, as Mr. Webster said in the case of the "Caroline," there must be shown "a necessity for self-defense, instant, overwhelming, and leaving no choice of means and no moment for deliberation."

**249.\*** Have maritime states a right of visit and inquiry within the parts of the ocean adjoining their own shores?

Yes, within their territorial waters, that is, within a marine league of their shores.

Sec. 3067, U. S. Revised Statutes, passed in 1799, declares it lawful for certain custom officers to board and search vessels within *four* leagues of the coast if bound to the United States. Dana says, "The statute does not authorize a seizure of a foreign vessel when beyond the territorial jurisdiction. The statute may well be construed to mean only that a foreign vessel coming into an American

port and there seized for a violation of revenue regulations, committed out of the jurisdiction of the United States may be confiscated, but that to complete the forfeiture it is essential that the vessel shall be bound to and come within the territory of the United States after the prohibited act. The act done beyond the jurisdiction is assumed to be part of an attempt to violate the revenue laws within the jurisdiction."

In a case before the United States Supreme Court in 1808, it was held that a seizure, under customs regulations, of a foreign vessel beyond the territorial waters of a state was not valid.

In the case of the American vessel *Aurora*, which was seized between four and five leagues from the Brazilian coast by the Brazilian government for attempting to carry on illicit trade with its citizens, it was held by the U. S. Supreme Court in 1804, "that a state may seize foreign merchant vessels beyond a marine league from the coast, in order to enforce its navigation and revenue laws." It is not probable that such seizure would now be held valid.

**250.** An insurrection, serious in extent, has existed for some time in the island of Jamaica. The insurgents have not been able to take and hold any seaport, but have maintained control of a great portion of the interior of the island. It is claimed by the Government of Great Britain that the insurgents have received aid in the way of arms and ammunition and general supplies from the United States. There is undoubtedly a great deal of truth in this claim, and all collectors of customs, and officers of the revenue cutters, as well as commanding officers of naval vessels, have been directed to use every effort to prevent this unlawful traffic.

While the insurrection has existed for some time and a very considerable fighting has been going on, Great Britain declares there is no war in Jamaica, and the United States has not acknowledged the belligerency of the insurgents, nor, in fact, has any other nation.

At this time you are in command of a vessel of the United States lying in the harbor of Port au Prince, Haiti, when you receive a telegram from the U. S. consul stating that a British war vessel has just entered the harbor of Port Antonio, on the north shore of Jamaica, with an American steamer in tow. A later telegram

states that, having investigated the matter, he finds the vessel to be the steamer *Columbia*, cleared from New York for Curacao, and that her papers and register are all right so far as he can judge; but that she has a large number of passengers on board whom the British claim to be filibusters, and she is carrying a supply of arms and ammunition. She was captured about forty miles to the northward and eastward of Jamaica.

You get under way and start immediately for Port Antonio, but when about fifteen miles from shore, you meet a British vessel of war with a steamer in tow flying the American flag. You recognize the steamer to be the *Columbia* evidently being towed to Kingston, where the English Court of Admiralty sits.

What do you do?

(Situation 3, 1896. N. W. C.)

"The right of visitation and search is a war right. In this case there is no war, and, therefore, the English cruiser has none of the rights of a belligerent. The only justification for the capture of the *Columbia*, would be on the ground of self-preservation and self-defense, but, as Mr. Webster said in his correspondence with respect to the *Caroline* affair, there must be shown to exist, "a necessity for self-defense, instant, overwhelming, and leaving no choice of means and no moment for deliberation." This certainly did not exist when the *Columbia* was captured, 40 miles northeast of Jamaica.

The capture of the *Virginus*, carrying the American flag, by a Spanish man-of war, on the high seas, in 1873, a case which has some points of resemblance to that of the *Columbia* in the problem, was justified by Mr. Dana; but entirely on the score that the *Virginus* was really a Spanish vessel, being owned by Spaniards, and, therefore, under Spanish jurisdiction, and consequently not entitled to an American register. "The flag is no protection without the right to use it."

The English commander had no evidence to show the register of the *Columbia* to be fraudulent, nor any reason to suspect her of being owned by the insurgents. That she was somewhat out of her course for Curacao was true. That she had an unusual number of passengers, with supplies of arms and ammunition, was reason for

suspicion and surveillance, but it could scarcely be considered to constitute a case of instant, overwhelming necessity for self-preservation.

The right of the English cruiser to capture the *Columbia* within his own territorial waters is not disputed.

Dana says:

“Where the insurgents and the parent state are maritime, the liability to political complications, and the questions of right and duty to be decided at once, usually away from home, by private citizens or naval officers, seem to require an authoritative and general decision as to the status of the three parties involved. If the contest is war, all foreign citizens and officers, whether executive or judicial, are to follow one line of conduct. If it is not a war, they are to follow a totally different line. If it is a war, the commissioned cruisers on both sides may stop, search, and capture the foreign merchant vessel; and that vessel must make no resistance, and must submit to an adjudication by a prize court. If it is not a war, the cruisers of neither party can stop or search the foreign merchant vessel; and that vessel may resist all attempts in that direction, and the ships of war of the foreign state may attack and capture any cruiser persisting in the attempt. If it is a war, the rules and risks respecting carrying contraband, or despatches, or military persons, come into play. If it is not a war, they do not. If it is a war, foreign nations must wait the adjudication of prize tribunals. If it is not a war, no such tribunal can be opened.”

This exposition of Dana's is quoted approvingly and adopted by Sir Edward Creasy in his “First Platform of International Law.”

Mr. Fish, Secretary of State, in a letter to Mr. Borie, Secretary of the Navy, May 18, 1869, quoted in Wharton's Digest, says:

“The right of search cannot be exercised against a neutral who has not recognized both parties as belligerents. If, therefore, the commanders of our men-of-war should ascertain that a vessel of the United States is about to be searched on the high seas by a Spanish vessel, they may be authorized to resist such search with all the force at their disposal. If, also, they should fall in with a vessel of the United States which has been captured by a Spanish vessel on the high seas on the ground of being a carrier of contraband, or any

other pretext involving a claim to belligerent rights in that quarter, they may be authorized to recapture the prize if they feel competent for that purpose.

It would, therefore, seem apparent that the capture of the *Columbia* was unjustifiable and a flagrant infringement of the rights of an American vessel, and the American cruiser would be justified in recapturing her by force, if necessary. This would, however, probably result in a war. To take such action, under the conditions of the problem, would be taking a very serious responsibility. It is easy to conceive of circumstances when such action would be mandatory and you would not hesitate a moment, but, in this case, you might readily assume that the illegal conduct of the English naval commander would be disavowed, and proper reparation made through the ordinary channels of diplomacy.

The position of the English Government in such a case as this is clearly illustrated in the affair of the *Deerhound*, an English vessel with arms and munitions of war for Don Carlos, which was captured off the Spanish coast on the high seas by a Spanish gunboat. Great Britain demanded and was granted the return of the vessel with all on board, though some of them were prominent adherents of Don Carlos.

Therefore, while having a clear right to recapture the *Columbia* with force if necessary, the expediency of such action would be questionable.

You should, on meeting the English cruiser, demand the surrender of the *Columbia* to your custody, in view of the fact that, up to the time of her capture, it was impossible for her to have committed any offense other than against the neutrality laws of the United States, and you might with propriety promise to take her back to the United States for trial. Should the surrender be refused, having decided that it was inexpedient to stand upon your perfect right to recapture the *Columbia*, you would accompany the vessel to Kingston, and there renew to the proper authorities your protest and demand, reporting the circumstances and your action to the Secretary of the Navy, Washington."

**CAPTURE IN MARITIME WAR; PRIZE COURTS.**

**251.** What vessels may be captured and sent into one of our ports for adjudication?

I. Any vessel of the enemy encountered in war time at sea or within the territorial jurisdiction of either.

II. Any neutral vessel.

a. Violating blockade.

b. Carrying contraband destined for the enemy.

c. Carrying hostile dispatches, when sailing practically in the service of the enemy.

d. In the military or naval service of the enemy, or under the control of the enemy for military or naval purposes.

e. Attempting to avoid search by escape.

f. Resisting visit and search.

g. Presenting fraudulent papers.

h. Not supplied with the necessary papers to establish object of search.

i. Destroying, defacing, or concealing papers.

j. Sailing under a license from the enemy.

III. One of our own vessels trading with enemy in time of war.

IV. Any vessel guilty of piracy.

V. A vessel violating revenue laws or other municipal laws of a port may be chased to the high seas and captured.

**252.** What are the duties of the commanding officer of a vessel making a capture?

He shall secure the documents of the ship and cargo, including the log book, with all other documents, letters, and other papers, found on board and make an inventory of the same, and seal them up, and send them, with the inventory, to the court in which proceedings are to be had, with a written statement that they are all the papers found, and are in the condition in which they were found; or explaining the absence of any documents or papers, or any change in their condition. He shall also send to such court, as witnesses, the master, one or more of the other officers, the supercargo, purser,

or agent of prize, and any person found on board whom he may suppose to be interested in, or have knowledge respecting the title, national character, or destination of the prize. He shall send the prize, with the documents, papers, and witnesses, under charge of a competent prize master and prize crew, into port for adjudication, explaining the absence of any usual witnesses. \* \* \* If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, a survey shall be had thereon and an appraisement made by persons as competent and impartial as can be obtained, and their reports shall be sent to the court in which proceedings are to be had; and such property, unless appropriated for the use of the Government, shall be sold by the authority of the commanding officer present, and the proceeds deposited with the assistant treasurer of the United States most accessible to such court, and subject to its order in the cause.

(See Sec. 4615, R. S.)

Stockton's Naval War Code, provides as follows:

" Art. 46. Prizes should be sent in for adjudication, unless otherwise directed, to the nearest suitable port, within the territorial jurisdiction of the United States, in which a prize court may take action.

Art. 47. The prize should be delivered to the court as nearly as possible in the condition in which she was at the time of seizure, and to this end her papers should be carefully sealed at the time of seizure and kept in the custody of the prize master.

Art. 48. All witnesses whose testimony is necessary to the adjudication of the prize should be detained and sent in with her, and if circumstances permit, it is preferable that the officer making the search should act as prize master.

The laws of the United States in force concerning prizes and prize cases must be closely followed by officers and men of the United States Navy.

Art. 49. The title to property seized as prize, changes only by the decision rendered by the prize court. But if the vessel or its cargo is needed for immediate public use, it may be converted to such use, a careful inventory and appraisal being made by impartial persons and certified to the prize court.

Art. 50. If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication—such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew—they may be appraised and sold, and if this can not be done, they may be destroyed. The imminent danger of recapture would justify destruction, if there should be no doubt that the vessel was a proper prize. But in all such cases all of the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered.”

**253.** What are the duties of the prize master?

Section 4617, U. S. R. S. “The prize master shall make his way diligently to the selected port, and there immediately deliver to a prize commissioner the documents and papers, and the inventory thereof, and make affidavit that they are the same, and are in the same condition as delivered to him, or explaining any absence or change of condition therein, and that the prize property is in the same condition as delivered to him, or explaining any loss or damage thereto; and he shall further report to the district attorney and give him all the information in his possession respecting the prize and her capture; and he shall deliver over the persons sent as witnesses to the custody of the marshall, and shall retain the prize in his custody until it shall be taken therefrom by process from the prize court.”

**254.** What are the prize courts in the United States?

The United States District Courts have original and exclusive jurisdiction of all prizes brought into the United States, except in case of insurrection against the United States, when the Circuit Courts also have original jurisdiction in certain cases. In prize cases appeals from the final decrees of the District Court are carried direct to the Supreme Court of the United States.

**255.** Who are prize commissioners and what are their duties?

Sec. 4621, R. S. “Any district court may appoint prize commissioners, not exceeding three in number; of whom one shall be a re-



tired naval officer \* \* \* \* who shall protect the interests of the captors and of the Department of the Navy in the prize-property, and at least one of the others shall be a member of the bar of the court, of not less than three years' standing. \* \* \*

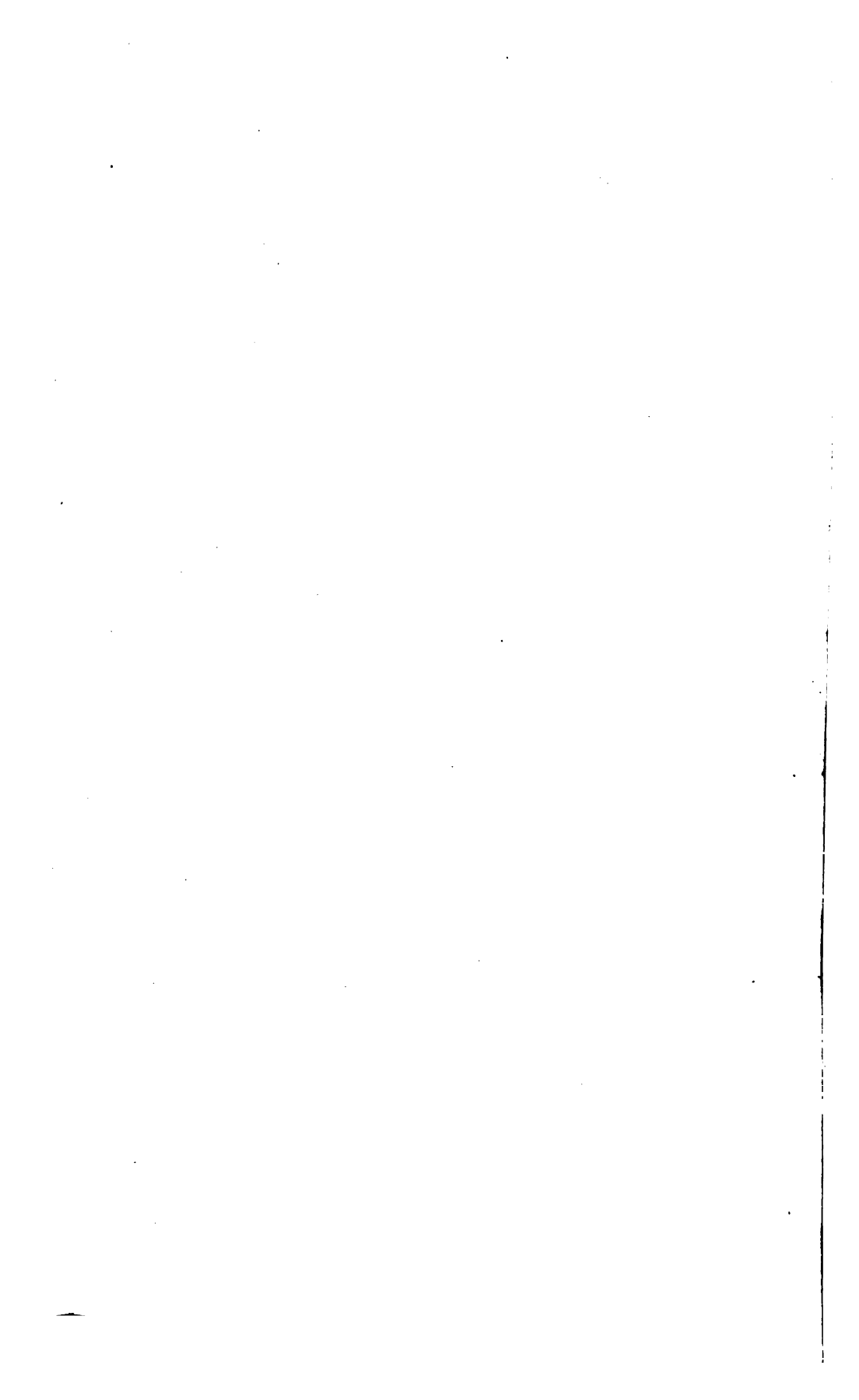
Sec. 4622, R. S. "The prize commissioners, or one of them, shall receive from the prize master the documents, papers and inventory; take the affidavit of the prize master; take the testimony of the witnesses on interrogatories prescribed by the court; take depositions of the prize crew and others at the request of the district attorney; examine the prize and make an inventory founded on actual examination; report to the court whether any part of it is in condition requiring immediate sale; report from time to time to the court anything relating to the condition of the property, its custody, or disposal, which may require action by the court. They shall also seasonably return into court, sealed and secured from inspection, the documents, and papers, and other preparatory evidence, and their own inventory, and if the captured vessel or any of its cargo or stores may be useful to the United States in war, they shall so report to the Secretary of the Navy."

**256.\*** Can the validity of a capture be decided in the courts of a neutral, with the neutral's consent?

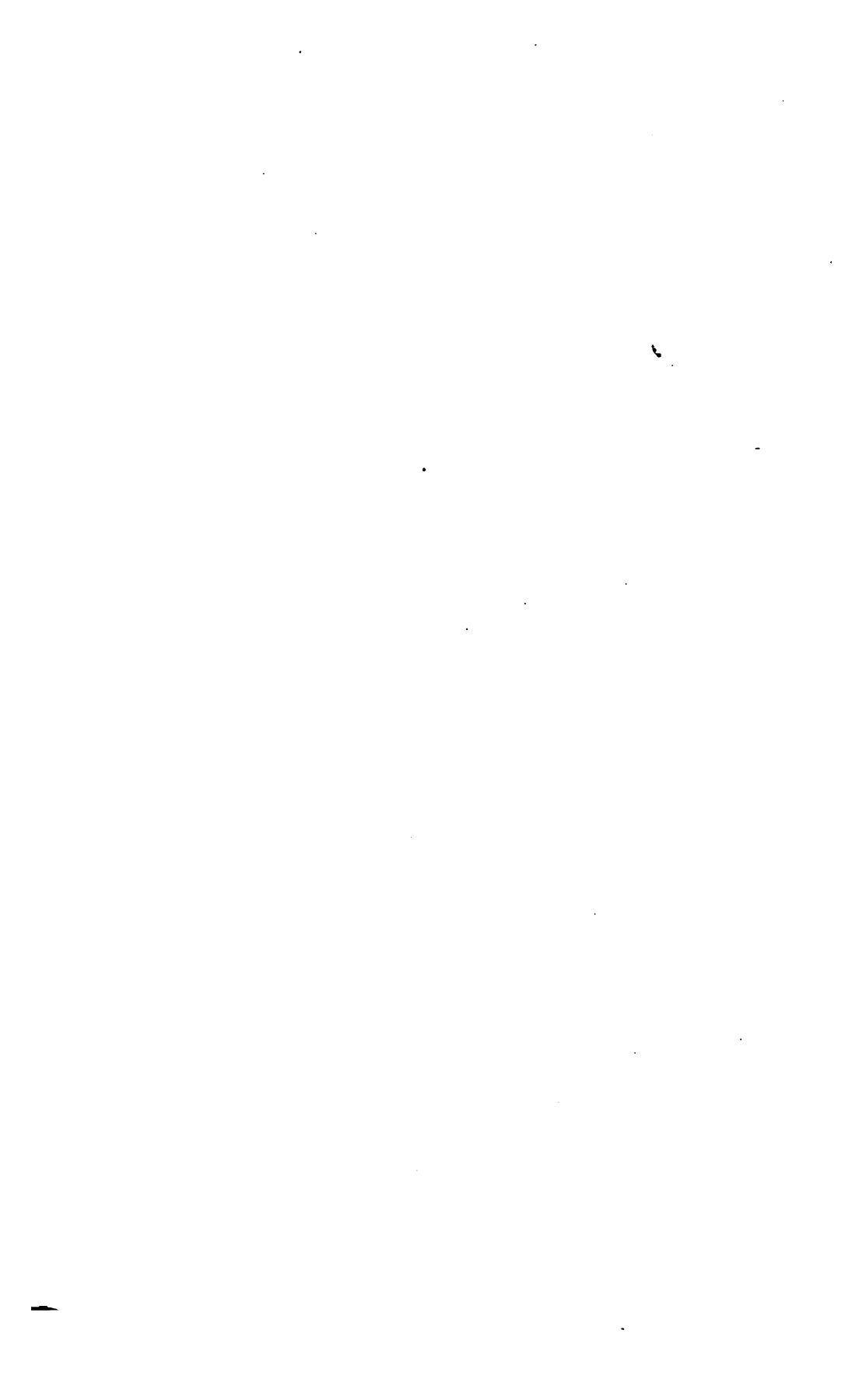
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